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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 74

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 30, 1946

CERTIORARI GRANTED MAY 31, 1946

No. 11041

United States
Circuit Court of Appeals

For the Ninth Circuit.

L. METCALFE WALLING, Administrator of the Wage and Hour Division, United States Department of Labor,

Appellant,

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 661 Howard Street, San Francisco

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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BESSIE MARGOLIN, Assistant Solicitor,
Washington, D. C.

DOROTHY M. WILLIAMS, Regional Attorney,
San Francisco, California

H. MILES RASKOFF, Associate Attorney
U. S. Department of Labor, 354 S. Spring St., Los Angeles 13, Calif.

For Appellee:

BEN F. SAYE
NEWLIN & ASHBURN
PAUL SANDMEYER
1020 Edison Bldg., Los Angeles 13, Calif.

[1*]

*Page numbering appearing at foot of page of original certified Transcript of Record

In the District Court of the United States, for the Southern District of California, Central Division

Civil Action. File No. 2912—O'C

L. METCALFE WALLING, Administrator of the Wage and Hour Division, UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Defendant.

COMPLAINT

For Injunction Under the Fair Labor Standards Act of 1938.

I.

Plaintiff brings this action to enjoin defendant from violating the provisions of Sections 15(a)(1), 15(a)(2)15(a)(5) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U.S.C. Title 29, Sec. 201 et seq.), hereinafter called the Act.

II.

Jurisdiction of this action is conferred upon the court by Section 17 of the Act.

III.

Defendant is, and at all times hereinafter mentioned was, a corporation organized under and existing by virtue of the laws of the State of Delaware and is, and at all times hereinafter mentioned was,

duly authorized by the laws of the State of California to transact business in [2] said State, and engaged in transacting business in said State. Pursuant to the statutes of the State of California, defendant has duly appointed Erle P. Halliburton, president of the corporation, whose address is 1709 W. Eighth Street, Los Angeles, California, its agent to accept service of process against it in the State of California.

IV.

Defendant has its principal office for the transaction of business in the State of California at 1709 W. Eighth Street, Los Angeles, California, its headquarters plant for California operations at Norwalk, California, and branches at Bakersfield, Avenal and Montalvo, all in the State of California and within the jurisdiction of this court, and is, and at all times hereinafter mentioned was, engaged at its said places of business in contracting to drill and in drilling oil wells.

V.

At all times hereinafter mentioned, the defendant employed and is employing approximately 62 employees in and about its said places of business in Los Angeles, Norwalk, Bakersfield, Avenal, and Montalvo, California, in the production of oil and in processes or occupations necessary to such production. Substantial quantities of the oil produced by defendant's said employees have been, and are being produced for interstate commerce and have been, and are being, shipped, delivered, transported,

offered for transportation and sold in interstate commerce, and shipped, delivered, and sold with knowledge that shipment, delivery or sale thereof in interstate commerce is intended from the State of California to, into and through States other than the State of California, and to foreign countries.

VI.

Defendant repeatedly has violated and is violating the provisions of Sections 7 and 15(a)(2) of the Act by employing many of its employees in the production of goods for interstate commerce, as aforesaid, for workweeks longer than 42 hours during the year beginning October 24, 1939, and for workweeks longer than 40 hours since October 24, 1940, without compensating [3] these employees for their employment in excess of 42 and 40 hours, is workweeks during such periods, at rates not less than one and one-half times the regular rate at which they were employed.

VII.

On October 21, 1938, the Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to the authority conferred upon him by Section 11(c) of the Act, duly issued and promulgated regulations prescribing the records of persons employed and of wages, hours, and other conditions and practices of employment to be made, kept, and preserved by every employer subject to any provision of the Act. The said regulations, and amendments thereto, were published in

the Federal Register and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516.

VIII.

Defendant, an employer subject to the provisions of the Act, repeatedly has violated and is violating the provisions of Sections 11(e) and 15(a)(5) of the Act, in that since October 24, 1938, it has failed to make, keep and preserve adequate and accurate records of its employees and the wages, hours, and other conditions and practices of employment maintained by it, as prescribed by the said regulations, in that the records kept by defendant failed to show adequately and accurately, among other things, the hours worked each workday and each workweek, the regular rate of pay, the basis upon which wages are paid, the total straight-time earnings for each workweek, and the total weekly overtime excess compensation with respect to many of its employees.

IX.

Defendant has, since the effective date thereof, repeatedly violated the aforesaid provisions of the Act. A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

Wherefore, cause having been shown, plaintiff demands judgment permanently enjoining and restraining defendant, its officers, agents, [4] servants, employees, and attorneys, and all persons acting or claiming to act in its behalf and interest, from vio-

lating the provisions of Sections 15(a)(1); 15(a)(2), and 15(a)(5) of the Act, and such other and further relief as may be necessary and appropriate.

IRVING J. LEVY
Acting Solicitor
MORTIMER B. WOLF
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
PERRY BERTRAM
Associate Attorney
United States Department of Labor
DAVID S. POLIER,
Supervising Attorney, substituted in place Mortimer B. Wolf. By Order Filed May 21, 1943.

Post Office Address: Solicitor of Labor, U. S. Department of Labor, 417 H. W. Hellman Bldg., 354 South Spring Street, Los Angeles, California.

[Endorsed]: Filed May 10, 1943. [5]

[Title of District Court and Cause.]

ORDER

The motion of defendant to dismiss and for a more definite statement or a bill of particulars came on for hearing and was heard before the Honorable J. F. T. O'Connor, District Judge, on the 4th day of October, 1943. Plaintiff appeared by Perry Bertram, Esq., associate attorney, and de-

fendant appeared by Ben F. Saye, Esq. and by Newlin & Ashburn by Paul Sandmeyer, its attorneys, and the matter having been fully argued and the court being fully advised, denied the motion to dismiss and granted in part the motion for a more definite statement or a bill of particulars, Now Therefore

It Is Ordered that the motion to dismiss be and is hereby denied; and

It Is Ordered that within twenty (20) days from the date hereof plaintiff serve upon defendant's counsel and file herein a more definite statement or a bill of particulars showing:

(a) Each class of employees claimed to have been employed for hours in excess of the statutory maximum without being compensated for such excess hours at rates not less than one and one-half times their regular rates of pay;

(b) Each class of employees as to whom it is claimed that records were not adequately or accurately made or maintained.

(c) The period or periods during which each of such claimed violations occurred;

(d) If it is claimed that only particular employees within a given class are affected by either overtime or record keeping violations, the names of a sufficient number of employees as will reasonably enable defendant to identify the manner of each claimed violation, and the identity of other employees similarly affected and specifying the periods during which each such claimed violation occurred, and further specifying whether the

claimed violation related to overtime compensation or to records or both.

It Is Further Ordered that if after filing his bill of particulars or a more definite statement, plaintiff discovers that violations other than of the type specified occurred, he may, at any time prior to sixty (60) days before the date of trial, file a supplemental bill of particulars or statement specifying the above information with respect to such claimed violations.

It Is Further Ordered that defendant may have twenty (20) days after service upon it and filing of the bill of particulars or a more definite statement to serve and file its responsive pleading thereto and to the complaint herein. [7]

It Is Further Ordered that except as herein provided the motion for a more definite statement or bill of particulars is denied.

Dated: October 5th, 1943.

J. F. T. O'CONNOR
District Judge

Approved as to form and content:

(Signed) PERRY BERTRAM
Attorney for Plaintiff
BEN F. SAYE
NEWLIN & ASHBURN
By PAUL SANDMEYER
Attorneys for Defendant

[Endorsed]: Filed October 6, 1943. [8]

[Title of District Court and Cause.]

BILL OF PARTICULARS

Pursuant to the order of this Court made and entered October 6, 1943, requiring plaintiff to file a bill of particulars, plaintiff states that the classes of employees claimed to have been employed for hours in excess of the statutory maximum without being compensated for such excess hours at rates not less than one and one-half times their regular rates of pay and as to whom it is claimed that records were not adequately or accurately made or maintained, are those shown in Column 1, and that the periods during which such claimed violations occurred are those shown in Column 2, as follows:

[9]

Column 1 Classes of Employees	Column 2 Periods
1. Field Operators, including Truckdrivers Clerical Personnel	October 24, 1939 to March 1940
2. Field Operators, including Truckdrivers Nightmen Warehousemen Mechanics and other Shop Employees Clerical Personnel Draftsmen	March 1940 to June 1941
3. Field Operators, including Truckdrivers Mechanic at Bakerfield Maintenance Men Warehousemen Clerical Personnel	June 1941 to March 1942

4. Field Operators, other than Truckdrivers Mechanic at Bakerfield	March 1942 to July 1942
5. Field Operators and other employees carried on defendant's "contract" payroll.	July 1942 to date

DOUGLAS B. MAGGS
Solicitor
IRVING J. LEVY
Associate Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
PERRY BERTRAM
Associate Attorney
United States Department of Labor Attorneys for Plaintiff.

Received copy of the within Bill of Particulars this 25th day of October, 1943.

BEN F. SAYE
NEWLIN & ASHBURN
By PAUL SANDMEYER
Attorney for .....

Received copy of the within Bill of Particulars this 25th day of October, 1943.

Attorney for Defendant.

[Endorsed]: Filed October 25, 1943. [11]

[Title of District Court and Cause.]

ANSWER

Comes now Halliburton Oil Well Cementing Company, a corporation, defendant herein, and answers plaintiff's complaint, and for such answer denies, admits and alleges:

I.

Defendant admits the allegations contained in paragraphs II, III and VII of plaintiff's complaint.

II.

Defendant admits the allegations contained in paragraph IV of plaintiff's complaint, except that defendant denies that at any time in plaintiff's complaint mentioned defendant engaged in contracting to drill or in drilling oil wells.

III.

Defendant admits that since March 15, 1940, defendant [12] has employed approximately 62 employees in and about its places of business in California, mentioned in paragraph V of the complaint and alleges that defendant and its employees were engaged as hereinafter more specifically alleged in paragraph V of this answer. Defendant denies generally and specifically each and all of the allegations contained in paragraph V of the complaint not hereinabove in this paragraph expressly admitted or alleged, except that defendant does not know whether or not any oil from any well on which defendant rendered services moved in interstate commerce and had no knowledge with

respect thereto at the time such services were rendered or at any subsequent time.

IV.

Defendant denies generally and specifically each and all of the allegations contained in paragraphs VI, VIII and IX of plaintiff's complaint and each and all of the matters and statements contained in plaintiff's bill of particulars herein, and in this connection defendant alleges that if it in any respect failed to comply with the provisions of Section 7 or Section 15(a)(2) of the Act or the regulations promulgated by plaintiff, such instances were few and were inadvertent and unintentional and did not occur subsequent to March 1, 1942.

V.

Further answering plaintiff's complaint, defendant alleges:

Continuously from a date prior to October, 1938, defendant has been and now is a corporation with its principal place of business at Duncan, in the State of Oklahoma, where its original records are kept and has maintained branch offices or places of business in most of the oil producing states. Defendant's business consisted of the manufacture and sale of oil well supplies and the rental and furnishing of equipment for use in connection with certain oil well services. Prior to March 15, 1940, [13] defendant's business in California was limited to the oil well service of testing and to the sale at retail within said state of floating equipment. Subsequent to March 15, 1940, defendant's business in

California has been enlarged to include testing, cementing, electric logging and similar services and the sale at retail within said state of bulk cement and floating equipment, and its servicing business is of a fluctuating character and depends upon the need of its particular types of service. The services rendered by defendant must be performed at a particular time and in most instances lessees of defendants equipment insist that defendant's employees operating such equipment not be changed until the work is completed. The hours worked by defendant's field employees fluctuate widely from week to week.

On and prior to October 24, 1938, defendant's employees were divided into the following principal classes: Clerical employees, shop employees and field employees. Shop employees were paid on an hourly rate basis while its office and field employees were paid on a monthly salary basis. After the enactment of the Fair Labor Standards Act of 1938 and in and about the month of December that year, defendant adopted the following plan which it believed complied with the requirements of the Act:

Defendant limited the number of hours per workweek for its office and shop employees to the maximum number of hours prescribed by the Act. The hours worked by field employees were limited to 84 hours per week and their salaries were adjusted to a regular hourly rate of pay in excess of the minimum rate prescribed by the Act for the maximum number of hours per workweek with compen-

sation of not less than one and one-half times such regularly hourly rate of pay for all hours in any workweek in excess of the maximum hours prescribed by the Act, with a guarantee on the part of the defendant that the employees should receive for their regular time and for such overtime as the necessity of the [14] business might demand, a sum not less than a certain fixed amount for each workweek. Defendant advised each of its superintendents of such plan of compensation and instructed them to explain the same to each of the employees, and defendant is informed and believes and upon such information and belief alleges that such plan of compensation was explained to each of defendant's employees in California, and that they understood and accepted such arrangement as their contracts of employment.

In March, 1941, defendant received from the regional office of plaintiff at New Orleans, Louisiana, a form of "Statement of Compliance," commonly referred to as form AD 85, with the request that the same be completed, and invited defendant to confer with plaintiff's regional office at New Orleans concerning any problem pertaining to defendant's plan of compliance. Defendant accepted such invitation and sent its general counsel to New Orleans to confer with plaintiff's supervisor-inspector in charge of that office regarding defendants' plan of compliance and to ascertain if there were any objection thereto. At such conference plaintiff's supervisor-inspector in charge of its office in New Orleans did not pass upon defendant's plan, but

suggested to defendant that the matter be transferred to plaintiff's regional office in Dallas, Texas, which regional office had jurisdiction over the territory in which defendant's head office in Duncan, Oklahoma was situated. To this suggestion defendant agreed and the transfer accordingly was made. In April, 1941, defendant's general counsel went to Dallas, Texas, and there conferred with plaintiff's regional attorney regarding defendant's entire plan of compliance. During such discussion the only objection made by said regional attorney to defendant's plan was with respect to the contract between defendant and its field employees, which objection was directed to that portion of the contract whereby defendant guaranteed to such employees a minimum weekly salary. At this conference plaintiff's regional attorney [15] stated to defendant's attorney that defendant's contract with its field employees complied with the Act as interpreted by the United States District Court in the case of Fleming v. A. H. Belo Corporation, reported in 36 Fed. Supp. 907, but that the Administrator had taken an appeal from the decision in that case and did not feel bound thereby. Said regional attorney made no demand upon defendant that it change its plan of compensation of its employees with respect to its field employees, or otherwise.

In August, 1941, defendant received from plaintiff's branch regional office at Los Angeles, California, a letter enclosing a form of compliance and in part stating: "In order to determine whether your business comes under the jurisdiction of the

Division with reference to interstate commerce, we ask that you fill out the attached form and return it here at once in the enclosed envelope." Defendant replied to said letter and therein stated that defendant was carrying on business in ten of the fifteen wage and hour division regions and that it would be a great convenience to defendant if inquiries from all of the other regions could be referred to the regional office for region 14 located at Dallas, Texas, in which region defendant's main office is located, and further advising that similar inquiries from other states had been referred to that regional office, and requesting that the California inquiry likewise be referred to that office. On September 4, 1941, defendant received a letter from plaintiff's branch regional office at Los Angeles, stating that defendant's reques was being referred to the regional office at San Francisco with the recommendation that the inspection be made through defendant's main office at Duncan, Oklahoma, and that unless he notified defendant otherwise it would not be necessary to submit the form of compliance through the Los Angeles office. No further communication was received from plaintiff's Los Angeles office, and that defendant understood thereby that the California inquiry had been referred to the regional office at Dallas, Texas, [16] and that the finding of the Director of Region 14 with respect to defendant's' compliance would be accepted by the California regional office.

On or about December 1, 1941, inspectors of the wage and hour division from the regional office at

Dallas, Texas, visited defendant's main office at Duncan, Oklahoma and inspected defendant's records with respect to its employees located in all of the states in which defendant carries on its business, including the State of California. Upon completion of said inspection, said inspectors stated to defendant that in certain minor instances, with respect to its office and shop employees, defendant had failed to comply with the Act and further stated that the Administrator took the position that the contract between defendant and its employees was not in compliance with the Act, notwithstanding the decision of the Circuit Court of Appeals for the Fifth Circuit in Fleming v. A. H. Belo Corporation as proceedings for review thereof were pending in the United States Supreme Court. Said inspectors further advised defendant that in order for it to comply with the Act as interpreted by the Administrator and to avoid injunctive proceedings it would be necessary for defendant to adopt for its field employees the plan as recommended by the Administrator for computing overtime wages of salaried employees working an irregular or fluctuating number of hours per week as outlined in Section 12 of Interpretative Bulletin No. 4 published by the Administrator. In order to avoid litigation and for the purpose of complying with the Act as interpreted by the Administrator, defendant discontinued the contract plan then in use with its field employees and, effective March 1, 1942, defendant adopted the irregular workweek plan set forth in Section 12 of Interpretative Bulletin No. 4 and continued such plan in effect until July 1, 1942.

After the decision of the United States Supreme Court in Walling v. A. H. Belo Corporation, defendant entered into written [17] contracts with each of its field employees in California working a fluctuating number of hours per week, upon the terms set forth in a form, a copy of which is hereto annexed, marked Exhibit "A". Thereafter, and about August 15, 1942, defendant entered into contracts with each of its field employees in California on the terms set forth in a form, copy of which is hereto annexed, marked Exhibit "B". In each of said contracts the basic rate of pay was and is in excess of the minimum required by the Act. Said contracts in the form set forth in Exhibit "B" hereto annexed now are, and at all times since August 15, 1942 have been, in effect and defendant is now and has at all times since the execution of said contracts paid its field employees overtime compensation in accordance with the terms and provisions of said contracts. Defendant has found by actual experience that the plan of compensation as set forth in said contracts was better adapted to defendant's field employees than the irregular workweek plan recommended by the Administrator and that the plan set forth in said contracts was preferred by the greater majority of defendant's field employees. In view of defendant's conference with the Reginal Director and Regional Attorney at Dallas, Texas, and in view of the decision of the United States Supreme Court in the Belo case, defendant believed and now believes that said contracts and the method of compensation therein provided in no wise vio-

lated the provisions of the Act, and until the commencement of this action defendant believes that said contracts would not and could not be questioned.

On or about the first part of November, 1942, an inspector from plaintiff's regional office at Dallas, Texas, visited defendant's principal office at Duncan, Oklahoma, and inspected the original contracts between defendant and its employees, including those in California, which were executed on forms, copies of which are annexed hereto marked Exhibits "A" and "B" and inspected defendant's payroll records with respect to the time worked by its [18] field employees, straight time compensation, overtime compensation, and the method of computing such compensation. Said inspector made no objection to said contracts or to defendant's records, and no criticism of defendant's plan of compensation of its employees or of its records was received subsequently from plaintiff's regional office at Dallas, Texas.

In the latter part of October, 1942, and the first part of November, 1942, an inspector from plaintiff's Los Angeles office called at defendant's Los Angeles office and requested permission to inspect defendant's records which request was granted. All of defendant's records at its Los Angeles office were made available to plaintiff's inspector and he was permitted to take away all records requested by him for the purpose of making copies thereof. At no time during such inspection or subsequently up to the time of the commencement of this action did

plaintiff or any of his representatives make any objection to or criticism of defendant's method of compensating its California employees, or the method in which its records were made and maintained, nor specify in any particular in which it was claimed that defendant in any respect failed to comply with the Fair Labor Standards Act or any regulation promulgated by plaintiff.

Defendant is now making and at all times since August, 1942 has made, kept and preserved, adequate and accurate records of the wages, hours and other conditions and practices of employment maintained by it as prescribed by the regulations issued and promulgated by the Administrator. Defendant in good faith is attempting to comply and has complied with said Act and with the regulations promulgated by the Administrator with reference to the maintenance of its records.

Wherefore, defendant prays that plaintiff take nothing by reason of his complaint herein, that same be dismissed, and that [19] defendant have all proper relief in the premises.

BEN F. SAYE
NEWLIN & ASHBURN
By PAUL SANDMEYER
Attorneys for Defendant

[Printer's Note]: Exhibits "A" and "B" to Answer were subsequently introduced in evidence as Exhibits 1 A and 1B and are set forth at pages 68-71. [20]

[Endorsed]: Filed, December 4, 1943.

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO PRECLUDE EVIDENCE OF CERTAIN CLAIMED VIOLATIONS.

The motion of the defendant to preclude evidence of alleged violations which have ceased, filed herein on January 25, 1944, regularly came on for hearing on February 7, 1944, before the Honorable J. F. T. O'Connor, District Judge, and was heard on that date as a partial pre-trial hearing. Plaintiff appeared by Douglas B. Maggs, Esq., Solicitor, Archibald Cox, Esq., Associate Solicitor, Dorothy M. Williams, Regional Attorney, and Perry Bertram, Esq., Attorney, by Perry Bertram, Esq., his attorneys, and defendant appeared by Ben F. Saye and Newlin & Ashburn, by Paul Sandmeyer, its attorneys. Statements and arguments were made by the respective counsel and the matter having been duly considered by the court and the court finding good cause and that said motion should be granted, now, therefore,

It Is Hereby Ordered that the motion of defendant to pre- [23] clude evidence of certain claimed violations by defendant of the Fair Labor Standards Act of 1938, be, and is, hereby granted; that at the trial of the above entitled cause, evidence of the claimed violations by defendant of the Fair Labor Standards Act of 1938, set forth under items 1, 2, 3 and 4 of plaintiff's Bill of Particulars herein be, and is, hereby precluded and that at the trial of said cause evidence of claimed violations of said

Act be, and is, hereby limited to "field operators and other employees carried on defendant's 'contract' payroll" and during the period subsequent to June 1942.

Dated: February 9, 1944.

J. F. T. O'CONNOR

Approved as to form, except as to the statement on page 1, lines 22-23, that the motion "was heard on that date as a partial pre-trial hearing," as to which statement plaintiff objects on the ground that the matter was brought on and heard as a motion and not as a partial pre-trial hearing.

DOUGLAS B. MAGGS,
Solicitor
ARCHIBALD COX,
Associate Solicitor
DOROTHY M. WILLIAMS,
Regional Attorney
PERRY BERTRAM,
Attorney
By PERRY BERTRAM
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 9, 1944. [24]

[Title of District Court and Cause.]

PRE-TRIAL ORDER

The above-entitled action having come on for pre-trial conference on April 10, 1944, plaintiff being represented by Miss Dorothy M. Williams

and Mr. Perry A. Bertram, his attorneys, and defendant being represented by Mr. Ben F. Saye and Mr. Paul O. Sandmeyer, its attorneys, and the parties having previously, on April 8, 1944, filed a Pre-Trial Statement containing stipulations to certain facts and a statement of the matters in issue, It is Hereby Ordered:

I.

The issues for trial are limited to the following:

(a) During the period here involved did defendant's field employees receive compensation for their hours of work in excess of forty hours in a week at rates not less than one and one-half times the [25] regular rates at which they were employed.

(b) If it is found that defendant violated the Fair Labor Standards Act, should an injunction issue in view of all circumstances found to exist.

II.

Either party may, upon the trial of the action, offer documentary evidence in addition to the documents annexed to and made a part of the parties' Pre-Trial Statement, but such additional documents shall be exhibited to the adverse party at least 10 days prior to the date of trial.

Dated: April 10, 1944.

J. F. T. O'CONNOR
United States District Judge

[Endorsed]: Filed April 10, 1944. [26]

[Title of District Court and Cause.]

O'Connor, J. F. T., Judge.

OPINION

On May 10, 1943 plaintiff filed his complaint seeking to enjoin the defendant from violating the provisions of Section 7(a) and 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201-218), hereinafter called the Act.

Section 7(a) of the Act requires that employees engages in interstate commerce or in the production of goods for interstate commerce be compensated at rates not less than one and one-half times the regular rates at which they are employed for all hours worked in excess of 44 per week [27] during the first year after October 24, 1938, in excess of 42 per week during the next succeeding year and in excess of 40 per week thereafter.

The complaint alleges that defendant is engaged in the business of contracting to drill and in drilling oil wells. The complaint further alleges that defendant's employees are engaged in the production of oil and in processes or occupations necessary to such production and that substantial quantities of the oil produced by defendant's employees have been, and are being, produced for interstate commerce and have been, and are being, shipped in interstate commerce. The complaint further alleges that during the period beginning October 24, 1939, and repeatedly thereafter, defendant employed many of its said employees for hours in excess of the maximum number of hours specified in section

7 of the Act without compensating them for such excess hours at one and one-half times the regular rates at which they are employed, as required by that section. It is further alleged that defendant failed to keep adequate and accurate records of the wages and hours of its employees, as required by section 11(c) of the Act and by Regulations, Part 516, issued by the Administrator pursuant to section 11(c).

There was no evidence to sustain the allegation that the defendant failed to keep adequate and accurate records of the wages and hours of its employees.

The attack on the sufficiency of the complaint in failing to state a cause of action, cannot be sustained.

Swift & Company v. United States, 1905, 196 U. S. 375.

Fleming v. Wood-Fruitticher Grocery Co., 37 F. Supp. 947 (N. D. Ala. 1941).

Fleming v. Smoot Sand & Gravel Corp., 41 F. Supp. 330 (D. DC 1941). [28]

Fleming v. Whittemore, 41 F. Supp. 767 (W. D. Ky. 1941).

Fleming v. Mason & Dixon Lines, 42 F. Supp. 230 (E. D. Tenn. 1941) and

Snyder v. Gurnsey, 43 F. Supp. 204 (N. H. 1942).

Walling v. Alabama Pipe Co., 5 Wage-Hour Rep. 966 (W. D. Mo. 1942).

This action is exclusively a suit for injunction, expressly authorized by Section 17 of the Act. It

is not a suit for damages nor an action to recover unpaid wages. There is no issue as to the particular amounts by which specific employees were underpaid.

The defendant denied generally and specifically the allegations of the complaint alleging violations of the provisions of the Fair Labor Standards Act

The action pertains to the "field operators and other employees carried on defendant's 'contract payroll' " during the period subsequent to July 1st, 1942. These employees are those employed in connection with defendant's oil well servicing and consists of cementers, testers, electric survey operators, cement equipment drivers, bulk cement drivers, electric survey drivers and field mechanics. During the period involved written contracts of employment existed between defendant and the respective employees containing (except for designation of occupation, hourly rate and amount of weekly guarantee) the following provision:

> "Employer agrees to employ Employee as a Cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $63.46 for each workweek." [29]

The regular basic hourly rate and the amount of weekly guarantee varied among the different types of employees. However, the hourly rate specified in each contract exceeded the minimum hourly rate specified in Section 6 of the Fair Labor Standards Act. Checks for compensation of all employees in all of the states where defendant does business are issued out of the Home Office at Duncan, Oklahoma, and until January, 1944, for convenience, all employees were paid semi-monthly. Since January 15th, 1944, all employees on the "contract payroll" have been paid biweekly. The plaintiff does not contend that any coercion, duress or undue influence attended the execution of the contracts by the employees. In this action contracts were both written and oral. There is no objection to an oral contract between an employer and employee, provided the employee is familiar wi h the terms of employment and continues to render service.

Shepler vs. Crucible, Fuel Co., C.C.A. 3, 1944, 140 Fed. (2) 371.

The evidence in this action clearly establishes that in numerous instances the corporation, by its method of computation, paid rates in excess of those required by the Fair Labor Standards Act and, in a few instances, less. However, these were corrected.

The granting of an injunction is a drastic action, and the court should not grant such orders unless it is clear that the violations of the Act are such as to clearly justify the order. Minor violations of

the Act would not justify such drastic measures. Ample authority is readily found which leaves the matter to the sound discretion of the court. In considering the matter, the courts carefully consider whether or not the alleged violations have ceased and that there is reasonable ground to believe they will not occur in future. [30] The court so finds in this case.

A careful examination of the contract between the defendant and its employees brings this action within the ruling of the Supreme Court of the United States in re Walling v. A. H. Belo Corporation, 316 U. S. 624, 62 Sup. Ct. 1223, 86 L. Ed. 716.

The working hours and conditions established by the evidence in this action are rather unusual. It is necessary for the defendant to employ a large number of men to service oil wells. The evidence showed that many of the employees would be called to render service when wells were being brought in and would wait for many hours and sometimes for several days without performing any service, but were compensated for the waiting time. This of course, was proper since the employees were ready, willing and able to render the service and were available when the work was required. The evidence showed that no employee was paid less than 40 cents per hour and was guaranteed not less than $42.69 per week with a maximum rate of 62 cents per hour, or maximum equivalent of $285.00 per month, and a minimum of $185.00 per month,

under the terms of the contract between defendant and its employees.

An injunction will be denied for the reason that the court finds no violation of any provisions of Sec. 15(a)(1), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act. The defendant will prepare Findings of Fact and Conclusions of Law in conformity to this opinion, serve and file the same within twenty days after the date hereof.

Dated Sept. 29, 1944.

J. F. T. O'CONNOR
Judge

[Endorsed]: Filed Sept. 29, 1944. [31]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action regularly came on for trial on May 16, 1944, and was tried on May 16, 17, 18 and 19, 1944, before the Honorable J. F. T. O'Connor, District Judge, without a jury. Plaintiff appeared by Douglas B. Maggs, Esq., Solicitor, Archibald Cox, Esq., Associate Solicitor, Miss Dorothy M. Williams, Regional Attorney, and Perry A. Bertram, Esq., attorney, all of the United States Department of Labor, by Miss Dorothy M. Williams and Perry A. Bertram, Esq., its attorneys. Defendant appeared by Ben F. Saye, Esq. and by Newlin & Ashburn by Paul Sandmeyer, its attorneys. On

April 8, 1944, there was filed herein a pre-trial statement containing stipulations of the parties and thereby and by the pre-trial order thereon made, the issues for trial were limited to the questions of (1) whether or not defendant's employees employed in California and [32] carried on defendant's "contract" payroll subsequent to July 1, 1942 received compensation for their hours of work in excess of forty hours in a workweek at rates not less than one and one-half times the regular rates at which they were employed, and (2) whether or not an injunction should issue in the event the court found that the defendant had violated the Fair Labor Standards Act of 1938. Evidence, oral and documentary, was received and the evidence having been closed and the matter fully argued by counsel for the respective parties, the matter was taken under submission by the court. The court thereafter announced its decision in favor of the defendant and now makes and files its written findings of fact and conclusions of law as follows:

The Court finds:

I.

The stipulated facts contained in the pre-trial statement, dated and filed herein April 8, 1944, by reference are incorporated herein and found true.

II.

Since July 1, 1942, defendant has been and now is a corporation, organized under and existing by virtue of the laws of the State of Delaware, with

its main office and place of business at Duncan, Oklahoma, and was and is authorized to transact business in the State of California. Defendant owns special tools and equipment for various types of oil well servicing and employs men skilled in the operation thereof. The employees of the defendant who were carried on defendant's "contract" payroll are field operators and other employees employed in connection with defendant's oil well servicing and in March, 1944 were sixty-six in number, consisting of cementers, testers, cement equipment drivers, bulk cement drivers, field mechanics, electric survey operator and electric survey driver, and are hereinafter referred to as "field employees". Defendant's oil well servicing business was of a fluctuating character and de- [33] pended upon the need of its particular types of service. Such servicing was required to be performed at a particular time and could not be postponed and in some instances defendant's customers insisted that defendant's employees operating servicing equipment should not be changed until the work was completed. The hours worked by such field employees fluctuated widely from week to week. Many hours shown on defendant's records as hours worked by the respective field employees represent time spent by such employees waiting on the job and not while actually engaged in manual labor. The field employees received vacations at full pay of one or two weeks each year and received full pay during periods of illness and were permitted absences to attend to personal affairs without deduction from pay.

Group life insurance was available to the field employees.

III.

The allegations contained in paragraphs II, III, IV and VII of plaintiff's complaint are true, except that at no time was defendant engaged in California, or elsewhere, in contracting to drill or in drilling oil wells.

IV.

During the period from July 1, 1942 to the date of the commencement of this action, defendant employed approximately sixty-two employees in and about its places of business in Los Angeles, Norwalk, Bakersfield, Avenal and Montalvo, California. During the period subsequent to July 1, 1942, defendant's field employees worked on or in connection with wells in California which produced oil, substantial quantities of which oil, or products therefrom, were shipped, delivered, transported and sold in interstate commerce from points within the State of California to points outside the State of California and in the performance of said work were engaged in occupations necessary to the production of said oil. Except as herein expressly found to be true, each and all of the allegations contained in paragraph V of plaintiff's complaint is and are untrue. [34]

V.

In July 1942, each of defendant's field employees, except as herein otherwise expressly found, executed a written contract of employment with defendant on the form of Exhibit "A" annexed to

defendant's answer herein. Thereafter and commencing about August 15, 1942, each of the field employees then in defendant's employ, and each new field employee at the time of his employment, except as herein otherwise expressly found, executed a written contract of employment with defendant on the form of Exhibit "B" annexed to defendant's answer. None of said written contracts of employment on form of Exhibit "B" annexed to defendant's answer have been terminated except those executed by employees who are no longer employed by defendant and as to such employees the contract was terminated on the date the employment ceased. Except for designation of occupation, hourly rate and amount of weekly guarantee, each of said written contracts between the respective field employees and defendant contained, among others, the following provision:

> "Whereas, Employee desires to enter the employ of the Employer, or is at this time so employed, and it is the desire of both Employer and Employee to negotiate or re-negotiate a contract of future employment.
>
> "Now, Therefore, the Employer and Employee mutually covenant and agree as follows:
>
> "Employer agrees to employ Employee as a Cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Em-

ployee shall receive for regular time and for such over- [35] time as the necessities of the business of the business may demand a sum not less than $63.46 for each workweek.

". . . Employee agrees to accept as full compensation for such work the wages herein set forth."

Each contract provided that the employer might increase the hourly rate and weekly guarantee therein specified by notice thereof to the employee.

The regular basic hourly rate and the amount of weekly guarantee varied among the different field employees. The regular basic hourly rate for the first forty hours of each workweek provided and specified in each of the written contracts was in excess of 30 cents. From time to time, by notice to the employees, the regular basic hourly rate and the weekly guarantee of many of the field employees were increased. On and after March 20, 1944, the regular basic hourly rate of each field employee was at least 40 cents. Each of said contracts was actually a bona fide contract of employment and was intended to and did really fix the regular rate at which each of the respective field employees was employed. Defendant agreed to employ and did employ, and each field employee agreed to be employed and was employed, at the hourly rate specified as the basic regular hourly rate in the written contract executed by the respective employees and defendant and in instances where the hourly rate was increased then at such increased hourly rate.

J. C. McCommon, a field employee, did not execute a written contract of employment. He worked for defendant during a period in 1942 after July 1 of that year. During such period said J. C. McCommon was negotiating with defendant with respect to his future rate of compensation and upon failure to arrive at an agreement, his employment with defendant terminated. A few other field employees may have worked for defendant for short periods prior to executing, or without executing, a written contract of employment. [36]

VI.

Except only in the three instances hereinafter expressly found:

Continuously from and since July 1, 1942, each field employee was compensated and paid by defendant in accordance with the terms of the written contract executed by said employee with defendant and where the basic hourly rate of pay and weekly guarantee were increased, then and thereafter in accordance with the contract as so modified. For each hour worked in excess of forty in each workweek from and since July 1, 1942, each field employee received from defendant as compensation an amount equal to or in excess of an amount one and one-half times the hourly rate specified in the written contract of employment executed by such employee with defendant and where the hourly rate was increased, then an amount at least one and one-half times the increased hourly rate. Continuously from and since July 1, 1942, each field

employee received for all hours worked in each workweek a sum of money not less than the aggregate of the product of the numebr of forty hours or less and the hourly rate specified in his contract, plus the product of the number of hours in excess of forty and an amount one and one-half times said specified hourly rate.

Subsequent to July 1, 1942, there were three instances, and only three instances, when a field employee received less than one and one-half times his regular hourly rate of pay for each hour worked in a workweek in excess of forty hours. Each of these instances occurred in 1943 and the underpayments were in amounts of $1.45, $7.72 and 52c, respectively. Each of said underpayments were unintentional on the part of defendant and were caused solely by inadvertent error in calculation.

Except as herein in this paragraph expressly found, each and all of the allegations contained in paragraph VI of plaintiff's complaint, is so far as said allegations pertain to any period of [37] time subsequent to July 1, 1942, is and are untrue.

VII.

The defendant is now making, keeping and preserving and at all times since July 1, 1942 has made, kept and preserved adequate and accurate records with respect to its field employees of the wages, hours and other conditions and practices of employment maintained by it as required by Section 11(c) of the Fair Labor Standards Act of 1938 and as prescribed by the Regulations promulgated and

issued by the Administrator with respect thereto. At all times from and since July 1, 1942, the defendant diligently and in good faith has attempted to comply and has complied, and diligently and in good faith is now attempting to comply and is complying with said Act and with the Regulations promulgated by the Administrator in reference to the making, keeping and preservation of its records pertaining to its field employees. Each and all of the allegations contained in paragraph VIII of plaintiff's complaint, in so far as said allegations pertain to any period of time subsequent to July 1, 1942, is and are untrue.

VIII.

Each and all of the allegations contained in paragraph IX of plaintiff's complaint is and are untrue.

IX.

Each and all of the statements and allegations contained in plaintiff's bill of particulars filed herein, in so far as the same pertain to any period of time subsequent to July 1, 1942, is and are untrue.

X.

Except as herein expressly found, no findings are made on any allegation of plaintiff's complaint, or allegations of plaintiff's bill of particulars, or on any allegation of defendant's answer which pertain to the period of time prior to July 1, 1942 and no findings are made on any allegation of plaintiff's complaint or [38] allegations of defendant's answer pertaining to employees of defendant other than

defendant's employees in California carried on defendant's "contract" payroll subsequent to July 1, 1942. The court deems findings upon such allegations immaterial and unnecessary by reason of the stipulation of the parties contained in the pre-trial statement limiting and confining the issues in this action to defendant's employees in California carried on defendant's "contract" payroll subsequent to July 1, 1942, and the order of the court thereon.

XI.

In August 1941, defendant received a letter from plaintiff's Branch Regional Office at Los Angeles, California, enclosing a form of statement of compliance and requesting completion thereof. Defendant replied to said letter and requested that the matter be referred to plaintiff's Regional Office at Dallas, Texas. On September 4, 1941, defendant received a letter from plaintiff's office at Los Angeles stating it would not be necessary for defendant to submit the form of compliance through the Los Angeles office unless it notified defendant otherwise. No further communication was received by defendant from plaintiff's Los Angeles office and defendant understood thereby that the California inquiry had been referred to the Regional Office at Dallas, Texas and that the latter's finding with respect to defendant's compliance with the Act would be accepted by the California Regional Office. On or about the first part of November, 1942, an inspector from plaintiff's Regional Office at Dallas, Texas, visited defendant's principal office at Dun-

can, Oklahoma and inspected the original written contracts between defendant and its field employees, including those in California, and inspected defendant's payroll records with respect to the time worked by its field employees, straight time compensation, overtime compensation and method of computing such compensation. Said inspector made no objections to said contracts or defendant's records, and no [39] criticism of defendant's plan of compensating its employees, or of its records, was ever received subsequently from plaintiff's Regional Office at Dallas, Texas. In the latter part of October, 1942, an inspector from the Los Angeles Office called at defendant's Los Angeles Office and requested permission to inspect defendant's records, which request was granted. All of the defendant's records at its Los Angeles Office were made available to plaintiff's inspector and he was permitted to take away all records requested by him for the purpose of making copies thereof. At no time during such inspection or subsequently, up to the time of the filing of this action, did plaintiff or any of its representatives make any objection to or criticism of defendant's method of compensating its California field employees, or the methods in which its records were made and maintained, or specify in any particular in which it was claimed that defendant in any respect failed to comply with the Fair Labor Standards Act of 1938 or any Regulation promulgated by plaintiff.

XII.

At all times from and since July 1, 1942, the defendant earnestly and in good faith has endeavored to comply, and now earnestly and in good faith is endeavoring to comply with the provisions of Section 7(a) of the Fair Labor Standards Act of 1938 and with Section 11(c) of said Act and with the Regulations promulgated and issued by the Administrator pursuant thereto. Any failure on the part of defendant to comply with the said provisions of said Act, or any of them, or with any provision of the said Regulations, was with respect to a minor matter and was unintentional and inadvertent. The court finds that the defendant intends to comply and earnestly and in good faith intends to make every endeavor to comply in the future with the provisions of the Fair Labor Standards Act of 1938 and with the Regulations promulgated, or which may hereafter be promulgated, by the Administrator. There is no probability or reasonable ground to believe that the defendant will fail to comply [40] in the future with any provision of said Act, or any provision of said Regulations.

XIII.

Defendant has found by actual experience and the court finds that the plan of compensating defendant's field employees as set forth in the written contracts between defendant and said field employees was and is better adapted to defendant's field employees than the irregular workweek plan recommended by the Administrator and that the

plan set forth in said contracts was preferred by the majority of defendant's field employees.

CONCLUSIONS OF LAW

As conclusions of law, the court finds and concludes:

I.

That Halliburton Oil Well Cementing Company, a corporation, the defendant, should not be enjoined or restrained and its officers, agents, servants, employees and attorneys and any person acting in its behalf and interest should not be enjoined or restrained from violating the provisions or any provision of the Fair Labor Standards Act of 1938, or from violating any regulation issued pursuant thereto, and the prayer of the plaintiff herein for an injunction against defendant and said other persons should be denied in its entirety.

II.

That the complaint of plaintiff herein should be dismissed.

Dated November 8, 1944.

J. F. T. O'CONNOR
District Judge [41]

Approved as to form.

DOUGLAS B. MAGGS,
Solicitor
ARCHIBALD COX,
Associate Solicitor
DOROTHY M. WILLIAMS,
Regional Attorney
PERRY A. BERTRAM,
Attorney
United States Department of Labor Attorneys for Plaintiff.

Received copy of the within Findings of Fact and Conclusions of Law this 19 day of October, 1944, 11:45 A. M.

PERRY BERTRAM
Attorney for Plaintiff.

[Enclosed]: Filed Nov. 8, 1944. [42]

In the District Court of the United States for the Southern District of California, Central Division

Civil Action

File No. 2912—OC

L. METCALFE WALLING, Administrator of the Wage and Hour Division, United States Department of Labor,

Plaintiff,

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Defendant.

JUDGMENT

This action regularly came on for trial on May 16, 1944, and was tried on May 16, 17, 18 and 19, 1944, before the Honorable J. F. T. O'Connor, District Judge, without a jury. Plaintiff appeared by Douglas B. Maggs, Esq., Solicitor, Archibald Cox, Esq., Associate Solicitor, Miss Dorothy M. Williams, Regional Attorney, and Perry A. Bertram, Esq., attorney, all of the United States Department of Labor, by Miss Dorothy M. Williams and Perry A. Bertram, Esq., its attorneys. Defendant appeared by Ben F. Saye, Esq. and by Newlin & Ashburn by Paul Sandmeyer, its attorneys. On April 8, 1944, there was filed herein a pre-trial statement containing stipulations of the parties and thereby and by the pre-trial order thereon made, the issues for trial were limited to the questions of [43] (1) whether

or not defendant's employees employed in California and carried on defendant's "contract" payroll subsequent to July 1, 1942, received compensation for their hours of work in excess of forty hours in a workweek at rates not less than one and one-half times the regular rates at which they were employed, and (2) whether or not an injunction should issue in the event the court found that the defendant had violated the Fair Labor Standards Act of 1938. Evidence, oral and documentary, was received and the evidence having been closed and the matter fully argued by counsel for the respective parties, the matter was taken under submission by the court. The court thereafter announced its decision in favor of the defendant and has made and filed herein its written findings of fact and conclusions of law; now, therefore,

It Is Ordered, Adjudged and Decreed that Halliburton Oil Well Cementing Company, the defendant, be not enjoined or restrained and is not enjoined or restrained, and its officers, agents, servants, employees and attorneys and any person acting in its behalf and interest be not enjoined or restrained and is not enjoined or restrained from violating the provisions or any provision of the Fair Labor Standards Act of 1938 or any regulation of the Administrator thereunder and the prayer of the plaintiff herein for an injunction against defendant and said other persons be and hereby is denied in its entirety; and

It Is Further Ordered, Adjudged and Decreed

that plaintiff's complaint herein be and hereby is dismissed.

Dated: November 8, 1944.

Approved as to form:

J. F. T. O'CONNOR
District Judge

Judgment entered Nov. 8, 1944. Docketed Nov. 8, 1944. Book C.O. 28, page 786. Edmund L. Smith, Clerk. By Francis E. Cross, Deputy.

Received copy of the within Judgment this 19 day of October, 1944, 11:45 A.M.

PERRY BERTRAM
Attorney for Plaintiff.
DOUGLAS B. MAGGS,
Solicitor
ARCHIBALD COX,
Associate Solicitor
DOROTHY M. WILLIAMS,
Regional Attorney
PERRY A. BERTRAM,
Attorney United States Department of Labor
Attorneys for Plaintiff

[Endorsed]: Filed Nov. 8, 1944. [44]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment, entered in this action on November 8, 1944.

DOUGLAS B. MAGGS
Solicitor
ARCHIBALD COX
Associate Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 5, 1945. [45]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH PLAINTIFF-APPELLANT INTENDS TO RELY ON APPEAL

Plaintiff-appellant states that the points on which he intends to rely on the appeal in this action are as follows:

1. The Court erred in holding that the hourly rates specified in the contracts between defendant-appellee and its field employees were the "regular rates" at which those employees were employed, within the meaning of section 7(a) of the Fair Labor Standards Act.

2. The Court erred in failing to hold that the regular rates at which defendant-appellee's field employees were employed were the weekly guaranties specified in the contracts divided by the number of hours worked in the week.

3. The Court erred in failing to hold that defendant-appellee [46] violated the provisions of sections 7(a) and 15(a)(2) of the Act with respect to workweeks in which hours in excess of forty were worked by its field employees.

4. The court erred in denying plaintiff-appellant's prayer for injunction and in dismissing the action.

DOUGLAS B. MAGGS
Solicitor.
BESSIE MARGOLIN
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor
Attorneys for Plaintiff-Appellant

[Endorsed]: Filed Mar. 20, 1945. [47]

[Title of District Court and Cause.]

PLAINTIFF-APPELLANT'S DESIGNATION OF PORTIONS OF RECORD TO BE CONTAINED IN RECORD ON APPEAL

To the Clerk of the above-named Court:

In accordance with Rule 75(a) of the Federal Rules of Civil Procedure, the plaintiff-appellant hereby designates the following portions of the record, proceedings and evidence to be contained in the record on appeal:

1. Complaint, filed May 10, 1943.

2. Order Denying Motion to Dismiss and Granting Motion for More Definite Statement or Bill of Particulars, dated October 5, 1943 and filed October 6, 1943.

3. Bill of Particulars, filed October 25, 1943.

4. Answer, with Exhibits A and B thereto, filed December 4, 1943.

5. Order Granting Motion to Preclude Evidence of Certain Claimed Violations, dated and filed February 9, 1944.

6. Pre-Trial Statement, dated and filed April 8, 1944, with Exhibits C, D, E, F, G, H, I, J, K, L, M, N, O and P [48] thereto

7. Pre-Trial Order, dated and filed April 10, 1944.

8. Opinion, dated and filed September 29, 1944.

9. Judgment, dated and entered November 8, 1944.

10. Entire transcript of the trial, with the exception of the following portions: p. 57, l. 17—p.

65, l. 14; p. 97, l. 10—p. 105, l. 10; p. 200, l. 4—p. 202, l. 21; p. 200, l. 9—p. 212, l. 4; p. 213, l. 2—p. 256, l. 11.

11. Exhibits 1, 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L, 1-M, 1-N, 1-O, 1-P (which are the same documents annexed as exhibits to the Answer and the Pre-Trial Statement referred to in (4) and (6) above), 3, 3-A, 4, 4-A, 5, 6 and 9.

12. Exhibits A, B, C, H, I, P, Q, and R.

13. Findings of Fact and Conclusions of Law, filed November 8, 1944.

14. Notice of Appeal, filed February 5, 1945.

15. Stipulation and Order Extending Time within which to file Designation of Contents of Record and Statement of Points, filed February 22, 1945.

16. Statement of Points on which Plaintiff-Appellant Intends to Rely on Appeal, filed March 20, 1945.

17. Plaintiff-Appellant's Designation of Portions of Record to be Contained in Record on Appeal, dated and filed March 20, 1945.

Dated: March 20, 1945.

DOUGLAS B. MAGGS
Solicitor
BESSIE MARGOLIN
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor
Attorneys for Pleintiff-Appellant.

[Endorsed]: Filed Mar. 28, 1945. [49]

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD TO BE INCLUDED IN RECORD ON APPEAL

To the Clerk of the Above Named Court:

In accordance with Rule 75(a) of the Federal Rules of Civil Procedure Halliburton Oil Well Cementing Company, defendant and appellee, hereby designates the following additional portions of the record, proceedings and evidence to be included in the record on appeal from the judgment in the above-entitled action:

1. Exhibits 2, 7, 8, D, E, E-1, E-2, F-1, F-2, G, J and O.

2. The following portions of the reporter's transcript of proceedings at the trial:

From line 17 to line 20 on page, 61, ending with the words "amount per hour." [50]

Line 21, page 62—"Miss Williams:"

From line 3 to line 16, inclusive, on page 64, beginning with the words "The question is."

From line 2 on page 213 to line 24 on page 253, inclusive.

3. "Stipulation for Extension of Time for Designation of Additional Portions of Record on Appeal and Order Thereon" filed March 23, 1945.

4. "Defendant's Designation of Additional Portions of the Record to be Included in Record on Appeal" filed April 9, 1945.

Defendant and appellee suggests that original exhibits 2, D, E, E-1, E-2, F-1 and F-2 be sent to the Appellate Court in lieu of copies and that the Court make an order therefor and for the safekeeping, transportation and return thereof.

Dated April 9, 1945.

BEN F. SAYE and
NEWLIN & ASHBURN
By: PAUL SANDMEYER
Attorneys for Defendant and
Appellee [51]

Received copy of the within Defendant's Designation of Additional Portions of the Record to Be Included in Record on Appeal this 9th day of April, 1945.

DOUGLAS B. MAGGS
Solicitor
BESSIE MARGOLIN
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor, Attorneys for Plaintiff-Appellant.

[Endorsed]: Filed April 9, 1945. [52]

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING TIME

It Is Hereby Stipulated by and between plaintiff and defendant that plaintiff-appellant may have to and including March 20, 1945, within which to file his designation of contents of record on appeal and statement of points pursuant to Rule 75, Federal Rules and Civil Procedure.

And It Is Further Stipulated by and between plaintiff and defendant that the time for filing the record on appeal with the Circuit Court of Appeals for the Ninth Circuit and for docketing the action

there, as provided in Rule 73(g) of the Federal Rules of Civil Procedure, may be extended to and including April 30, 1945. [53]

Dated: Feb. 19, 1945.

DOUGLAS B. MAGGS
Solicitor
ARCHIBALD COX
Associate Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor, Attorneys for Plaintiff.

BEN F. SAYE and
NEWLIN & ASHBURN
By: PAUL SANDMEYER
Attorneys for Defendant.

So Ordered this 22 day of February, 1945.

J. F. T. O'CONNOR
United States District Judge.

[Endorsed]: Filed Feb. 22, 1945. [54]

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

United States of America,
Southern District of California,
City and County of Los Angeles—ss.

Ann Silverstein, being first duly sworn according to law, deposes and says:

That she is a secretary in the Office of the Solicitor of the Department of Labor of the United States, with her official residence in the Los Angeles branch office of the Department, 954 South Spring Street, Los Angeles, California, a citizen of the United States, over 18 years of age, and not a party to the above-entitled action; that on the 20th day of March, 1945, she mailed two true copies of the Plaintiff-Appellant's Designation of Portions of Record to be Contained in Record on Appeal, and two true copies of the Statement of Points on which Plaintiff-Appellant intends to Rely on Appeal in the above-entitled case to Ben F. Saye, Esquire and Paul Sandmeyer, Esquire, attorneys for the defendant-appellee, in the following manner:

[55]

By depositing said copies in a United States mail box at Los Angeles, California, in a sealed envelope bearing the frank of the Department of Labor, addressed to Ben F. Saye, Esquire and Paul Sandmeyer, Esquire, attorneys-at-law, 1020 Edison Building, Los Angeles, California; that there is a regular mailing service between the place of mailing and the place so addressed.

ANN SILVERSTEIN

Subscribed and sworn to before me this 20th day of March, 1945.

[Seal] [Illegible]

Notary Public in and for the City and County of Los Angeles, State of California.

[Endorsed]: Filed Mar. 20, 1945. [56]

[Title of District Court and Cause.]

STIPULATION FOR EXTENSION OF TIME FOR DESIGNATION OF ADDITIONAL PORTIONS OF RECORD ON APPEAL AND ORDER THEREON

It Is Hereby Stipulated and Agreed by and between plaintiff and defendant that Halliburton Oil Well Cementing Company, defendant and respondent, may have to and including April 12, 1945, within which to serve and file a designation of additional portions of the record, proceedings and evidence to be included in the record on appeal from the judgment in the above entitled action. [57]

Dated March 23, 1945.

DOUGLAS B. MAGGS
Solicitor
BESSIE MARGOLIN
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor, Attorneys for Plaintiff-Appellant

BEN F. SAYE and
NEWLIN & ASHBURN
By: PAUL SANDMEYER
Attorneys for Defendant-Respondent

It is So Ordered:

J. F. T. O'CONNOR
United States District Judge

[Endorsed]: Filed May 23, 1945. [58]

[Title of District Court and Cause.]

STIPULATION FOR TRANSMISSION OF ORIGINAL EXHIBITS TO THE CIRCUIT COURT

It Is Hereby Stipulated by and between plaintiff and defendant, through their respective counsel, that, subject to the order of the Court, the originals of the exhibits specified by the plaintiff-appellant in Items 11 and 12 of his Designation of Portions of Record to be Contained in Record on Appeal, filed March 20, 1945, and the exhibits specified by the defendant-appellee in Item 1 of its Designation of Additional Portions of the Record to be Included in Record on Appeal, be sent to the Clerk of the Circuit Court of Appeals by the Clerk of this Court in lieu of copies thereof, pursuant [59] to Rule 75(i) of the Rules of Civil Procedure.

Dated: April 12, 1945.

DOUGLAS B. MAGGS
Solicitor
BESSIE MARGOLIN
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor, Attorneys for Plaintiff-Appellant

BEN F. SAYE and
NEWLIN & ASHBURN
By: PAUL SANDMEYER
Attorneys for Defendant-Respondent

[Endorsed]: Filed April 16, 1945. [60]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL EXHIBITS TO THE CIRCUIT COURT OF APPEALS

The parties having filed their designations of the portions of the record to be included in the record on appeal, specifying therein all of the exhibits received in evidence at the trial, which are voluminous, and having filed their stipulation to the effect that, pursuant to Rule 75(i) of the Rules of Civil Procedure, the original exhibits be transmitted to the Circuit Court of Appeals, It Is Hereby Ordered:

That all of the following exhibits received in evidence in this case be sent by the Clerk of this Court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit in lieu of copies thereof: [61]

Plaintiff's Exhibits 1, 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L, 1-M, 1-N, 1-O, 1-P; 2, 3, 3-A, 4, 4-A, 5, 6, 7, 8, 9.

Defendant's Exhibits A, B, C, D, E, E-1, E-2, F-1, F-2, G, H, I, J, O, P, Q, R.

These exhibits are to remain in the custody of the Clerk of the Circuit Court of Appeals who is to be responsible for their safekeeping and who is to return them to the Clerk of this Court upon disposition of the appeal.

Dated: April 1, 1945.

J. F. T. O'CONNOR
United States District Judge

Approved:

BEN F. SAYE and
NEWLIN & ASHBURN
By PAUL SANDMEYER
Attorneys for Defendant-Respondent.

[Endorsed]: Filed April 16, 1945. [62]

In the District Court of the United States in and for the Southern District of California, Central Division

No. 2912—O'C—Civil

L. METCALFE WALLING, Administrator of the Wage and Hour Division, United States Department of Labor,

Plaintiff,

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Tuesday, May 16, 1944

Before the Honorable J. F. T. O'Connor

Appearances:

For the Plaintiff:

Dorothy M. Williams, San Francisco, California.

Perry Bertram, Assistant Attorney, United States Department of Labor, 417 H. W. Hellman Building, 354 South Spring Street, Los Angeles, California.

For the Defendant:

Newlin & Ashby, By Paul O. Sandmeyer, Esq., 1020 Edison Building, Los Angeles, California. [1*]

Ben F. Saye, Duncan Oklahoma. [2]

Los Angeles, California
Tuesday, May 16, 1944. 10:00 A.M.

(Opening statement on behalf of the government by Miss Williams.).

(Opening statement on behalf of the defendant by Mr. Sandmeyer.)

The Court: Proceed.

Miss Williams: If your Honor please, I would like to introduce into evidence at this time the pre-trial statement.

May I approach the Clerk and take that from the record?

For the record, your Honor, I am now asking the Clerk to remove from the record the pre-trial statement and exhibits attached thereto, which were filed on April 8, 1944. If your Honor please, I wish now to offer into evidence the pre-trial statement as Plaintiff's Exhibit No. 1, and each of the exhibits attached thereto as part of the Exhibit No. 1. The exhibits attached to the pre-trial statement

*Page numbering appearing at top of page of original certified Transcript.

have been lettered C through P. I ask, if the Court please, that each one of those exhibits be marked separately as for example, 1-C, 1-D and so forth, and detached from the statement for ease in reference.

The Court: So understood.

Miss Williams: I also wish to offer into evidence at this time, if your Honor please, two exhibits which are referred to in the pre-trial statement that were not incor- [3] porated in it. The first I offer as Plaintiff's Exhibit 1-A.

The Clerk: Am I going to mark these other exhibits in the pre-trial statement as 1-A, -B, -C?

Miss Williams: They will begin with 1-C, Mr. Clerk. I am now going to give you 1-A and 1-B in another document. 1-A is referred to in the pre-trial statement and is Exhibit A to the defendant's answer; and I offer it in evidence as Plaintiff's Exhibit 1-A.

The Clerk: Plaintiff's Exhibits 1 and 1-A.

(The documents referred to were marked as Plaintiff's Exhibit 1 and 1-A, and were received in evidence.)

Miss Williams: I am now offering Plaintiff's Exhibit 1-B, which is also referred to in the pre-trial statement and is Exhibit B to defendant's answer. I offer it in evidence as Plaintiff's Exhibit 1-B.

The Clerk: Plaintiff's Exhibit 1-B in evidence.

(The document referred to was marked as Plaintiff's Exhibit 1-B, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 1

In the District Court of the United States for the Southern District of California, Central Division

Civil Action

File No. 2912—OC

L. METCALFE WALLING, Administrator of the Wage and Hour Division, United States Department of Labor,

Plaintiff,

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Defendant.

PRE-TRIAL STATEMENT

Plaintiff and defendant, through their respective counsel, respectfully submit the following pre-trial statement:

I.

STIPULATIONS

It is stipulated and agreed by and between plaintiff and defendant that for the purposes of this action only the following shall be deemed established facts at the trial and in any other proceeding herein.

1. The main office of defendant is at Duncan, Oklahoma, and it engages in business in the oil producing states, including California. It owns special

tools and equipment for various types of cementing and for testing and surveying oil wells and employs men skilled in the operation thereof and is engaged in the business of renting such tools and equipment to persons engaged in the drilling or operating of oil wells and furnishing skilled employees to operate the same. Defendant also sells cement and other products for use in oil wells.

2. This action involves those of defendant's employees employed in California and carried on defendant's "contract" payrolls subsequent to July 1, 1942, which said employees hereinafter will be referred to as defendant's "field" employees. As of March 1944 there were 66 field employees, of whom 16 were cementers, 10 testers, 1 an electric survey operator, 15 cement equipment drivers, 19 bulk cement drivers, 1 an electric survey driver and 4 field mechanics.

3. During the period from July 1, 1942 to the date hereof, defendant's field employees worked on or in connection with wells in California which produced oil, substantial quantities of which oil or products therefrom were shipped, delivered, transported and sold in interstate commerce from points within the State of California to points outside the State of California, and in the performance of said work were engaged in occupations necessary to the production of said oil.

4. Subject to such exceptions, if any, as may be shown at the trial, in July 1942 defendant's field employees and defendant executed written contracts of employment upon the form of Exhibit "A" an-

nexed to defendant's answer herein; and thereafter, and commencing about August 15, 1942, each of defendant's field employees then in defendant's employ and each new field employee, at the time of his employment, executed a written contract of employment on the form of Exhibit "B" annexed to defendant's answer. The respective hourly rates and weekly guarantees specified in the written contracts of employment are set out in columns three and two, respectively, of the payroll chart hereto annexed and marked Exhibit "C." None of said written contracts of employment on form Exhibit "B" annexed to defendant's answer have been terminated except those executed by employees who are no longer employed by defendant and as to such employees the contract was terminated on the date the employment ceased.

5. For many years prior to July 1, 1942, and during the period from July 1, 1942 to January 15, 1944, all of defendant's employees, including the field employees, received compensation semi-monthly. Since January 15, 1944, all field employees have received their compensation bi-weekly.

6. Annexed hereto are true copies of the following designated documents:

Exhibit No. "D"—Instructions issued by defendant to its Superintendent shortly prior to July 1, 1942.

Exhibit No. "E"—Instructions issued by defendant to its Superintendents prior to March 1942, being the prior instructions referred to in Exhibit "D".

Exhibit No. "F"—Sample payroll forwarded by defendant to its Superintendents shortly prior to July 1942 to be used in connection with Exhibit "D".

Exhibit No. "G"—Letter dated August 11, 1942, sent by defendant to its Superintendents on or about said date.

Exhibit No. "H"—Sample payroll forwarded by defendant to its Superintendents in August 1942 in connection with Exhibit "G".

Exhibit No. "I"—Instructions issued by defendant to its Superintendents in January 1944.

Exhibit No. "J"—Sample payroll forwarded by defendant to its Superintendents in January 1944 in connection with Exhibit "I".

The chart hereto annexed, marked Exhibit "C", was used by defendant in the preparation of payrolls subsequent to July 1, 1942 and is the chart referred to in the instructions hereto annexed, marked Exhibits "D", "G" and "I". Attached hereto, marked Exhibit "K", is form of notice of increase in compensation used subsequent to July 1, 1942 and prior to execution of contracts on the form of Exhibit "B" annexed to defendant's answer. Annexed hereto, marked Exhibits "L" and "M", are forms of notice of increase in compensation used subsequent to the execution of the written contracts on the form of Exhibit "B" annexed to defendant's answer.

7. Annexed hereto, marked respectively Exhibits "N", "O" and "P", are true copies of correspondence between plaintiff's representative at

Los Angeles and defendant's home office, each of which letters was written and mailed by the person whose name is at the bottom thereof on or about the date thereof and, respectively, were received by the addressee in due course of mail.

8. Subject to such exceptions, if any, as may be shown at the trial, during the period here involved each field employee received for all hours worked in a workweek a sum of money not less than the aggregate of the product of the number of forty hours or less and the hourly rate specified in his contract plus the product of the number of hours in excess of forty and one and one-half times said specified hourly rate.

9. Either party may offer documentary evidence in addition to the documents covered by this stipulation but such additional documents will be exhibited to the adverse party at least ten days prior to date of trial and either party may offer evidence proving or tending to prove facts other than the facts covered by this stipulation.

II.

MATTERS NOT IN ISSUE IN THIS ACTION

Plaintiff does not contend:

(a) That the written contracts of employment between defendant and its field employees were executed by reason of any coercion, duress or misrepresentation.

(b) That there were any violations by defendant of Section 11(c) of the Fair Labor Standards Act

or the regulations promulgated thereunder except such, if any, as resulted from defendants method of compensating its field employees.

Defendant does not contend that its field employees are not subject to the provisions of the Fair Labor Standards Act.

III.

THE ISSUES FOR TRIAL

[Written in pencil in margin]: Sec 7—

1. During the period here involved did defendant's field employees receive compensation for their hours of work in excess of forty hours in a week at rates not less than one and one-half times the regular rates at which they were employed.

2. If it is found that defendant violated the Fair Labor Standards Act, should an injunction issue in view of all circumstances found to exist.

Dated April 8, 1944.

DOUGLAS B. MAGGS
Douglas B. Maggs,
Solicitor
ARCHIBALD COX
Archibald Cox,
Associate Solicitor
DOROTHY M. WILLIAMS
Dorothy M. Williams,
Regional Attorney
PERRY A. BERTRAM
Perry A. Bertram,
Attorney
United States Department of Labor Attorneys for Plaintiff.

BEN F. SAYE and
NEWLIN & ASHBURN
By PAUL SANDMEYER
Attorneys for Defendant.

[Endorsed]: Filed April 8, 1944.

PLAINTIFF'S EXHIBIT No. 1-A

June 25, 1942

Dear Sir:

A few days ago the Supreme Court of the United States rendered a decision placing an interpretation on the Fair Labor Standards Act sustaining our interpretation and arrangement as set forth in a letter to our field employees dated December 21,

1938. The Supreme Court says: "Employment contracts providing for basic hourly rate of pay higher than wage required by Act, for overtime compensation at not less than one and one-half times such basic rate, and guaranteeing to employee the wage he received before Act are not invalid."

About the first of this year, the Wage and Hour Division of the Department of Labor advised us that under its interpretation the above plan which we had adopted would not meet the requirements of the Act. In order that we might avoid litigation, we agreed to comply with the Act as interpreted by the Wage and Hour Division of the Department of Labor, and on March 1, 1942, we put into effect the irregular work week plan demanded by the Wage and Hour Division of the Department of Labor.

The arrangement which we put into effect in December, 1938, and which remained in effect until March 1 of this year has proven by experience to be by far the most satisfactory arrangement, for both our Company and the employees. The peculiar nature of our business makes it very unsatisfactory to our employees and to our Company, if we should be forced to pay our employees on a strictly hourly basis. Also, the irregular work week plan is very confusing and tends to create dissension and cause an unhealthy condition between the employer and the employees. Your Company has, therefore, concluded that the arrangement which we maintained in effect from December, 1938, until March 1 of

this year, is by far the most satisfactory arrangement for our field employees. We, therefore, are returning to our original agreement of employment beginning July 1, 1942.

In order that there may be a definite understanding as to your contract of employment, we advise that from and after July 1, 1942, your basic rate of pay will be ..... per hour for the first 40 hours each week and that for time over 40 hours each week, you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $.....

Yours very truly,

HALLIBURTON OIL WELL CEMENTING COMPANY

By ERLE P. HALLIBURTON

President.

EPH:ek

I hereby acknowledge the arrangement as above set forth to be my understanding of the terms and conditions of my employment and I agree to same.

Dated this ..... day of July, 1942.

[Endorsed]: Filed 5/16/44.

PLAINTIFF'S EXHIBIT No. 1-B

EMPLOYMENT CONTRACT

This Agreement, made and entered into this ..... day of ....., 19...., between Halliburton Oil Well Cementing Company, a corporation, of Duncan, Oklahoma, hereinafter referred to as "Employer" and ....., of ....., hereinafter referred to as "Employee".

Witnesseth

Whereas, Employer is engaged in the manufacture and sale of oil well equipment and other manufactured products and in the furnishing of special oil well services such as cementing, acidizing, electrical logging, sand testing and the servicing of various oil well specialty tools and devices, and

Whereas, Employee desires to enter the employ of the Employer, or is at this time so employed, and it is the desire of both Employer and Employee to negotiate or re-negotiate a contract of future employment,

Now, Therefore, the Employer and Employee mutually covenant and agree as follows:

Employer agrees to employ Employee as a ..... and to pay Employee for his services a regular basic rate of ..... cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessi-

ties of the business may demand a sum not less than $..... for each workweek.

Employee agrees to enter the employ and service of Employer and agrees to perform any work which may be assigned to him by the Employer in connection with any of the activities in which Employer is engaged and that he will perform such work in a careful, prudent and workmanlike manner to the best of his knowledge, skill and ability and Employee agrees to accept as full compensation for such work the wages herein set forth.

Employee consents and agrees that during the term of his employment under this contract he will, in connection with the performance of his work, submit himself to the direction, supervision and control, as a special employee, of those with whom Employer may contract to furnish special services and equipment in connection with Employer's activities.

Employee agrees that Employer may make such deductions from Employee's wages as Employee may from time to time authorize and such other deductions as may be required of Employer by law.

It is mutually agreed that in the event Employer should desire to increase Employee's wages Employer shall notify Employee of the increased basic hourly rate of pay and the increased guaranteed weekly minimum salary which shall be increased in proportion to the basic hourly rate increase and such increased basic hourly rate and guaranteed minimum weekly salary shall be substituted for the

basic hourly rate and guaranteed minimum weekly salary herein provided and the terms and conditions of this contract shall in all other respects remain in full force and effect.

This contract may be terminated at any time at the option of either the Employer or the Employee upon notice to the other party of intention to exercise such option.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

HALLIBURTON OIL WELL
CEMENTING COMPANY
By ERLE P. HALLIBURTON
President

.....

Employee

[Endorsed]: Filed 5/16/44.

PLAINTIFF'S EXHIBIT No. 1-C

Halliburton Oil Well Cementing Company

PAYROLL CHART APPLICABLE TO FIELD EMPLOYEES WORKING UNDER THE "CONTRACT PLAN"

(1) Monthly Salary Equivalent To Weekly Col. (2)	(2) Guaranteed Weekly Salary Per Contract	(3) Regular Hourly Rate Per Contract (1st 40 Hours)	(4) Overtime Hourly Rate
$150.00	$34.62	$ .32	$ .495
155.00	35.77	.33	.51
160.00	36.92	.34	.53
165.00	38.08	.35	.545
170.00	39.23	.37	.555
175.00	40.38	.38	.57

(1) Monthly Salary Equivalent To Weekly Col. (2)	(2) Guaranteed Weekly Salary Per Contract	(3) Regular Hourly Rate Per Contract (1st 40 Hours)	(4) Overtime Hourly Rate
180.00	41.54	.39	.585
185.00	42.69	.40	.605
190.00	43.85	.41	.62
195.00	45.00	.42	.64
200.00	46.15	.43	.655
205.00	47.31	.44	.675
210.00	48.46	.45	.69
215.00	49.62	.46	.705
220.00	50.77	.47	.725
225.00	51.92	.48	.74
230.00	53.08	.50	.75
235.00	54.23	.51	.765
237.50	54.81	.51	.78
240.00	55.38	.52	.785
245.00	56.54	.53	.80
250.00	57.69	.54	.82
255.00	58.85	.55	.835
260.00	60.00	.56	.85
265.00	61.15	.57	.87
270.00	62.31	.58	.885
275.00	63.46	.59	.905
280.00	64.61	.61	.915
285.00	65.77	.62	.93

Note: The Overtime hourly rate, Column 4, equals or exceeds one and one-half times the hourly rate in Column 3.

PLAINTIFF'S EXHIBIT No. 1-D

Halliburton Oil Well Cementing Company
Duncan, Oklahoma
Application of the Fair Labor Standards Act to Field Employees
Mimeograph No. H

Section I—Introduction

This mimeograph as was the mimeograph issued

in February, 1942, relates to all field employees subject to the minimum wage and maximum hours provisions of the Fair Labor Standards Act (Wage & Hour Law). Recent court decisions have materially revised the interpretations applied to the Act by the Wage and Hour Division and this mimeograph is an outline of the rules which, effective July 1, 1942, are to be followed by the field employees of this Company in complying with the changes in the interpretations of the Act.

For purposes of clarity, this mimeograph will be referred to as "Mim. No. II" and the principal changes effective July 1, 1942 are as follows:

(1) All operators, cementers, acid treaters, testers, tool operators, echometer operators, well loggers, etc., regardless of monthly salary are to be considered subject to the maximum hours provisions of the Act and are required to prepare accurate time reports.

(2) Effective July 1, 1942, the "Irregular Workweek Plan" is to be entirely abandoned and irregular hour employees are to work under the "Contract Plan" outlined in Mim. No. II.

Section II—Subject Employees

All the field employees now subject to the Act remain subject and the group is expanded to include operators defined below; however, other classes of employees who have been considered exempt, supervisory, warehouse foremen, field technical employees, are to continue as exempt employees.

Subject Operators—The general rule to be followed is to consider each individual who customarily and regularly is engaged in manual activity connected with running a job and who is in direct charge of the operation of an outfit or a tool as a subject operator. However, in those instances where an employee may be classed as a fieldman, assistant fieldman, camp head or foreman and who actually runs jobs or operates tools a portion of the time, it is necessary to determine his particular classification by an investigation of his duties. If on an average he runs 20% of the number of jobs as the average operator in the district, he is probably subject to the Act.

The tests for determining whether a supervisor may be exempt as an "Executive" are briefly listed as follows: (1) An employee whose primary duty consists of the management of a recognized department or subdivision thereof (2) who customarily and regularly directs the work of other employees therein (3) whose suggestions and recommendations as to the hiring, firing, promotion or other change of status of other employees are given particular weight (4) who is compensated on a salary basis at not less than $130 a month (5) whose hours of work of the same nature as that performed by subject employees do not exceed 20% of the number of hours worked in the workweek by the subject employees under his direction.

Section III—Wage or Salary Plans

Subject field employees are now working under three wage or salary plans as follows: (1) Regular Workweek Plan (2) Hourly Rate Basis (3) Irregular Workweek Plan. The working hours and computation of pay for employees now working under the "Regular Workweek Plan" or the "Hourly Rate Basis" are to remain unchanged as no employee carried on either the regular workweek or hourly pay roll is affected by Mim. No. 11.

Effective July 1, 1942, the "Irregular Workweek Plan" is to be discontinued entirely and the employees in this group and all subject operators are to work under an arrangement to be identified as the "Contract Plan".

Contract Plan

Each employee who signs the contract of employment offered to subject field employees who are now working irregular hours is to work under the "Contract Plan". The contract of employment provides for a basic hourly rate which is equal to or in excess of the minimum required by the Act and it guarantees the employee a minimum weekly salary regardless of whether sufficient hours are worked during the week so that the calculation of his pay based on the contract hourly rate for the first 40 hours and not less than one and one-half times the contract hourly rate for each hour in excess of 40 during the week equals the minimum weekly salary.

Irregular hour field employees are now working

and will continue to work on a monthly minimum salary basis; however, for contract purposes, the monthly salary is reduced to an equivalent weekly salary by multiplying the monthly salary by 12 (annual salary) and dividing the annual salary by 52 (weekly salary). The guaranteed weekly salary in a contract may be translated into a monthly salary by reversing the calculation.

Example:

The guaranteed weekly salary in the contract is $34.62. The equivalent monthly salary is calculated as follows:

52 x $34.62 = $1800.24 annual salary $1800.00 ÷ 12 = $150.00 monthly salary.

The monthly salary equivalent to the guaranteed weekly salary in the contract is to be listed on the pay roll sheet and each "contract plan" employee is to be paid semi-monthly and is to receive the larger of the two following sums: (1) One-half the equivalent monthly salary (2) the amount computed on the basis of the hourly rate provision in the contract.

Section IV—Time Reports

All subject field employees who are now preparing daily time reports are to continue the reports without interruption. The contracts become effective July 1, 1942, however, subject operators who have not been preparing daily time reports are to begin preparing the reports on Sunday, July 5, 1942.

Instructions for preparing daily time reports are as follows: (1) each report is to be filled in clearly and completely (2) only work time is to be shown on the report (3) the employee is to sign his name as it is carried on the pay roll, that is, the full given name, surname, and middle initial (no "nicknames") (4) a single approval by any supervisor designated by superintendent is sufficient for any time report. In prior instructions, two approvals were required for drivers' reports.

Exempt employees will not be required to file time reports and no record of hours worked for this group is necessary; however, the exemption class has been materially narrowed so that it now includes only purely supervisory employees and field technical employees, engineers, geologists, etc.

Please particularly note the following points in the preparation of the daily time reports. Each subject employee is to prepare his or her own time report for each day during which there is any work time and it is advisable to have a time report for each day during which an employee is "subject to call." The time report is to be signed by each employee personally in the same manner as the name is shown on the pay check.

Section V—Determination of Work Time

There is no change in the fundamental rules and instructions which have been previously issued covering the determination of work time for field employees. The work time of operators may be determined by referring to the instructions on the

time report books and the material in the previous mimeograph.

For those employees working under the "Contract Plan", the basic hourly rate in the contract has been fixed so that each employee may work a total of 84 hours in any single workweek before his compensation computed from the hourly rate exceeds the guaranteed minimum weekly salary fixed in the contract. Although a contract employee may work a total of 84 hours in any single workweek before his guaranteed weekly or semi-monthly salary is affected, this fact does not relieve the Company or the employees from the provisions of the Act requiring accurate time reports and the imperative necessity for correctly preparing, posting and filing the time reports is not affected by the application of the "Contract Plan."

Section VI—Pay Roll Procedure

General Instructions

Pay roll sheet, HOWCCO Form #491, is to be used for all employees subject to the provisions of the Wage & Hour Law and the old style pay roll is to be used for exempt employees. However, the narrowing of the exempt group materially curtails the use of the old style pay roll.

Pay rolls will continue to be made up in the present pay roll offices of the division from the daily time reports turned in by all subject employees each day. The various locations must mail the daily time reports to the pay roll office of the division at such intervals so that the pay roll may

be posted and mailed to Duncan within three days after the expiration of the pay period.

Daily time reports for each individual shall be grouped and the time reports arranged in accordance with the listing on the pay roll sheet. The time reports are to be forwarded to Duncan at the same time as the pay roll is mailed. Because of the increased number of time reports, it is satisfactory to express the reports when it results in saving in postage. Hours shown on the pay roll if not supported by time reports will not be paid for so it is essential that the hours on the pay roll fully agree with each individual's time reports.

Preparation of Pay Roll

1. Separate pay rolls shall be prepared for each group of employees working under the same "Workweek Plan", that is, all employees, regardless of occupation, working under the "Contract Plan" shall be grouped together, and all employees working under the "Regular Workweek Plan", etc., shall be grouped.

(a) List employees on each pay roll by location and in strict alphabetical order regardless of occupation.

(b) The surname of each employee will be entered first on the line, followed by the exact, full, first given name, and followed by the middle initial, if any.

(c) Under the heading "Occupation", classify each employee according to the code list.

2. It is essential that every day during a pay

period be accounted for on the pay roll sheet. Absences as well as days worked must be shown. The symbols to be used for designating absences are listed on the top of the pay roll sheet, Form #491. Post the applicable symbol for each day of absence. If a "Contract Plan" employee is "subject to call" but performs no work on a particular day, fill the space with Zero "0". The use of "0" is not applicable to regular hour or hourly rate employees as any absences, except on Sunday, for employees of these groups must be explained by use of the appropriate letter symbol.

3. Before the field pay roll offices forward the pay roll to Duncan, under all of the plans, the hours shown on the daily time reports must be balanced with the hours listed on the pay roll and the procedure after balancing is as follows:

(a) Regular Workweek & Hourly Rate Pay Rolls:

The employee's monthly or hourly rate must be filled in and the overtime pay for each week and the total for the period must be shown in the same manner as these pay rolls are now prepared.

(b) Contract Pay Roll:

In the column headed "Rate", show the monthly salary which is equivalent to the guaranteed weekly salary in the employee's contract and in the column "Extensions", show the earnings for the semi-monthly period based on the monthly rate. No further posting by the field office is necessary as the Duncan office will compute and add to the guaranteed earnings any compensation for hours in excess

of 84. This procedure eliminates the use of columns "OT Pay" and "Total Overtime" by the field pay roll offices for contract employees.

Effective July 1, 1942, the chart applicable to the "Irregular Workweek Plan" is eliminated; however, the chart for the "Regular Workweek Plan" is to continue to be used. A chart applicable to contract employees will be furnished each field office.

Sample Pay Rolls

It is not necessary to revise the samples of the pay rolls for regular hour and hourly rate employees furnished field offices in February of this year as these employees are not affected by Mim. No. 11. A sample pay roll for contract employees has been prepared and the method illustrated in the sample is to be used, effective July 1, 1942, in preparing the pay rolls for all employees working under the "Contract Plan".

PLAINTIFF'S EXHIBIT No. 1-E

Halliburton Oil Well Cementing Company
Duncan, Oklahoma

Application of the Fair Labor Standards Act to Field Employees

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Section I—Introduction

This mimeograph is concerned with all field employees subject to the minimum wage and maximum hours provisions of the Fair Labor Standards Act (Wage & Hour Law). It is essential that by March 1, 1942 the Company be operating in strict compliance with the provisions of the Act as interpreted by the Wage and Hour Division and because of the brief time available, the mimeograph has attempted to outline only the fundamental rules that must be observed and has not endeavored to consider special problems that may exist in individual districts. It is probable that the instructions may be revised or clarified as problems develop and it is expected that, within a short period, complete information will be forwarded to each employee

Plaintiff's Exhibit No. 1-E.—(Continued)

subject to the Act outlining specifically the requirements of the Act applicable to the employees in the group in which the particular individual is classified.

The minimum wage permitted by the Act is thirty cents an hour and this provision presents no particular compliance problem for field employees. The maximum hours provisions of the Act require that all subject employees receive compensation at a rate "not less than one and one-half times the regular rate of pay" for all hours in excess of 40 worked in any week. As you will note, the Act does not limit the number of hours an employee may work in a week but merely provides that the employee must be paid time and a half for each hour in excess of 40 in any single week.

Section II—Subject Employees

The term "subject employees" when used in this mimeograph means all employees who are subject to the minimum wage and maximum hours provisions of the Act. All subject employees are required to prepare accurate daily time reports and are to be paid overtime compensation for each hour in excess of 40 worked in any week. The term "operators" means cementers, acid treaters, testers, well loggers, or in other words, the individual in direct charge of the operation of the unit or device. The term "exempt" or "exempt employees" means those employees who are subject to certain minimum wage requirements but who, because of the nature of their duties or professional training, are classified as either "Executive", "Administrative",

Plaintiff's Exhibit No. 1-E—(Continued)

or "Professional" employees as these terms are defined by the Administrator and are exempt from the maximum hours provisions of the Act.

In conference with the Office of the Wage and Hour Administrator, the following groups or classes of employees have been determined as subject employees:

(1) Drivers—All truck drivers as the classification is commonly used in connection with Halliburton field employees are subject.

(2) Field Mechanics and Field Shop Employees—All field mechanics and field shop employees are subject.

(3) Well Logging Operators—All well logging operators receiving less than $200 as regular monthly salary are subject. Well logging operators receiving $200 or more a month are exempt.

(4) Field Technical Employees—Included in this group are field engineers, field geologists, laboratory and research employees. Employees of this group receiving less than $200 as regular monthly salary are subject. Employees of this group receiving $200 or more a month are exempt.

(5) Field Warehouse Employees and Field Clerks—All employees in this group are subject with the possible exception of the warehouse foremen at the major warehouses where helpers are employed. The status of each individual foreman of a major warehouse is to be determined by the nature of the work actually performed by each foreman. (See explanation below)

Plaintiff's Exhibit No. 1-E—(Continued)

(6) Night Telephone Operators—All night telephone operators at field camps are subject.

(7) Field Office Employees—Field office employees, stenographers, secretaries, telephone operators, clerks, etc., are subject.

(8) Porters, Janitors & Miscellaneous Maintenance Employees—All employees in this group are subject, including temporary help.

It is possible and probable that a portion or all of the foremen of the six major field warehouses of the Company, Houston, Corpus Christi, Flora, Great Bend, Odessa and Norwalk, may come within the standards or tests listed in the Regulations of the Administrator and may be classified as "Executive" employees exempt from the hours provisions of the Act.

The tests are briefly listed as follows: (1) An employee whose primary duty consists of the management of a recognized department or subdivision thereof (2) who customarily and regularly directs the work of other employees therein (3) whose suggestions and recommendations as to the hiring, firing, promotion or other change of status of other employees are given particular weight (4) who is compensated on a salary basis at not less than $130 a month (5) whose hours of work of the same nature as that performed by subject employees do not exceed 20% of the number of hours worked in the workweek by the subject employees under his direction.

Plaintiff's Exhibit No. 1-E—(Continued)

To be classed as an "Executive" employee, the individual must meet all of the tests listed. It is very probable that the warehouse foremen clearly fulfill the first four requirements; however, it is necessary to investigate the actual activities of each foreman to be certain that his work hours do not exceed the 20% limitation on work of a nature similar to that of the helpers.

Section III—Wage or Salary Plans

Field employees of the Company depending upon the nature of the assigned duties are working and will continue to work under three separate basis salary or wage arrangements as follows: (1) Hourly Rate Employees (2) Monthly Salaried Employees Customarily Working Regularly Assigned Hours (3) Monthly Salaried Employees Customarily Working a Fluctuating Number of Hours.

Assuming that the base pay of subject field employees is in excess of the 30c hourly minimum, in all instances where the number of hours worked in a single week by a subject employee exceeds the maximum of 40, it is necessary to pay overtime compensation and the method of determining the regular rate of pay upon which overtime compensation is based varies for each of the classifications listed. In order to clarify the methods of calculating possible overtime compensation, each of the classifications is considered separately.

Hourly Rate Basis:

The Company has relatively few hourly rate em-

Plaintiff's Exhibit No. 1-E—(Continued)

ployees in the field and the method of computing earnings is comparatively simple. Each employee working on an hourly rate basis is to be paid the regular hourly rate for the first 40 or less hours in each week and is to be paid one and one-half times the regular hourly rate for each hour in excess of 40 in any week.

Example

An employee is working at a regular hourly rate of $.50. During a pay period, the employee worked as follows: 1st Full Wk.—40 hours; 2nd Wk.—48; Partial Wk. Hrs.—16 regular rate of pay hours.

Calculation of Earnings

96 hours @ .50	$48.00
8 hours @ .75	6.00
Semi-monthly Earnings	$54.00

See Pay Roll Sample #3 for illustration of hourly basis employees.

Regular Workweek Plan—Monthly Salaried Employees Working Regularly Assigned Hours:

A considerable number of field employees such as field office employees, warehousemen, etc., paid on a monthly salary basis are now working or may be assigned regular working hours. Under a salary plan for employees assigned regular hours, the monthly salary may compensate the employee at regular rate of pay for any regular week regardless of whether the regular workweek exceeds 40 hours; however, in order to simplify the prepara-

Plaintiff's Exhibit No. 1-E—(Continued)

tion of pay rolls and assure uniformity in calculations for possible overtime, the Company considers that all employees working regularly assigned hours are working on a basis of 40 hours a week. For this reason, if the regular workweek or the actual number of hours worked in a week exceed 40, the employee must be paid one and one-half times his regular rate of pay for each hour in excess of 40 in any week.

As the Company issues pay checks semi-monthly, the pay periods will not coincide with completed weeks and, therefore, in computing earnings for a semi-monthly pay period, overtime compensation is added only if earned during a week ending in the pay period. This procedure is necessary because it is not possible to calculate the overtime rate applicable to the earnings of a particular week for employees paid on the basis of the "Irregular Workweek Plan" until the week is terminated and it avoids confusion in determining the weekly overtime earnings of the employees working under the "Regular Workweek Plan". As there are 24 pay periods and 52 weeks in a year, this procedure will result in a salaried employees receiving possible overtime compensation for 2 weeks ending in 20 of the pay periods, and for 3 weeks ending in 4 of the pay periods.

As the Company considers all field employees working regularly assigned hours are working on a basis of 40 hours, in order to calculate overtime

Plaintiff's Exhibit No. 1-E—(Continued)

pay, the formula to be followed in reducing the regular monthly salary to an hourly rate is as follows: Multiply the monthly salary by 12 (annual salary), divide the annual salary by 52 (weekly salary), and divide the weekly salary by 40, which equals the regular hourly rate.

In order to illustrate the calculation of earnings for employees working under the "Regular Workweek Plan", an example follows: In the example, so as to provide a more complete illustration, it is assumed that the pay period used is one of the 4 pay periods during the year in which 3 separate weeks terminate.

Example

Assume an employee is being paid a regular salary of $100 a month, works regularly assigned hours, and during the 3 separate weeks which terminated in the pay period, the hours worked were as follows: 40, 46, and 48 hours.

Calculation of Hourly Rate

12x$100=$1200 $1200÷52=$23.08 $23.08÷40=.58

Calculation of Earnings in Pay Period

Base Pay			$50.00
Overtime Pay:			
1st Week (40 Hrs.)			None
2nd Week (46 Hrs.)	6 x .87	(1½ x .58)	5.22
3rd Week (48 Hrs.)	8 x .87		6.96
		Earnings for period	$62.18

Plaintiff's Exhibit No. 1-E—(Continued)

Irregular Workweek Plan—Monthly Salaried Employees Working Irregular Hours.

An employee subject to the wage and hour restrictions of the Act whose work hours actually vary from week to week may be paid a regular monthly salary and if this regular salary reduced to an hourly basis exceeds the minimum rate established by the Act, it will compensate the employee for all salary due at regular rate of pay regardless of the number of hours worked in any week.

Since the monthly salary compensates the employee at regular rate of pay for all hours worked in a week, if the workweek exceeds 40 hours, it will be necessary to pay overtime compensation for each hour in excess of 40 equal to only one-half of the hourly rate computed by reducing the monthly salary to an hourly basis, with the hourly rate fluctuating each week in accordance with the number of hours actually worked in the particular week.

Example

An employee receives $150 a month, is paid semimothly, and the workweeks fluctuate with the requirements of the job. The monthly salary of $150 is equivalent to a weekly salary of $34.62.

(12 x $150 = $1800 $1800 ÷ 52 = $34.62)

During a pay period in which 3 separate weeks terminated, the employee worked as follows: 30, 40 and 50 hours respectively.

Plaintiff's Exhibit No. 1-E—(Continued)

Calculation of Earnings for Pay Period

Base Pay (½ of monthly salary) $75.00

Overtime Compensation.

	Regular Weekly Salary	Hrs. Wked. Week	Hourly Rate for Wk.	Overtime Pay	
1st Wk.	$34.62	30	$1.15	None	
2nd Wk.	34.62	40	.87	None	
3rd Wk	34.62	50	.69	10x.34½—$3.45	3.45
				Earnings for Period	$78.45

As you will note, the "Irregular Workweek Plan" permits the employer to pay employees actually working fluctuating hours a fixed minimum salary regardless of the number of hours worked in any week and provides that the employee will receive additional compensation for each hour in excess of 40 in any week.

Section IV—Time Reports

The Act provides that an accurate record be maintained showing the actual number of hours worked each day and each week by each subject employee. A time report form has been devised which is designd to show in graph form the hours worked by the employee during each day. The form is particularly applicable to subject, field employees working fluctuating hours; however, it is sufficiently flexible so that it may be used by all field employees. It is probable that in the near future a time form will be furnished which will be more applicable to regular hour employees and which may be used by this group; however, until

Plaintiff's Exhibit No. 1-E—(Continued)

further notice and effective March 1, 1942, each subject field employee is to prepare a daily time report using the graph form, for each day during which the employee worked. All time reports, weekly or daily, which are now in use are to be discontinued so that there will be complete uniformity in the field time report forms.

Instructions for preparing the daily time reports are as follows: (1) each report is to be filled in clearly and completely (2) only work time is to be shown on the report (no off duty time) (3) the employee's name is to be signed as it is carried on the pay roll, that is, the full given name, surname, and middle initial (no "nicknames") (4) the report of each driver is to be approved by the operator in charge of the outfit and also by a member of the supervisory personnel of the district designated by the superintendent (5) for time reports of subject employees other than drivers, the designated supervisor's approval is sufficient.

Each workweek shall commence at 12:01 A.M. on Sunday and shall terminate at midnight on the following Saturday or a period of 168 consecutive hours from 12:01 A.M. Sunday. Each workday shall extend from midnight to midnight and as the time reports are daily, if an employee works through midnight, this time is to be shown on separate reports.

Exempt employees, as defined in the mimeograph, will not be required to file time reports and no record of hours worked for the group of employees

Plaintiff's Exhibit No. 1-E—(Continued)

is necessary. As you will note, the exempt group includes all operators except well loggers earning less than $200 as regular monthly salary, the field supervisory personnel and the technical personnel receiving $200 or more as regular monthly salary.

Section V—Determination of Work Time

Because of the nature of the Company's field operations, it is clearly impossible to formulate rules and instructions which may cover all the problems that will occur in connection with the question of work time. General rules may be established which are applicable to the majority of questions; however, it is recognized that instances will frequently occur where it will be necessary to rely on the practical judgment of the supervisory personnel and operators charged with the responsibility of controlling work time.

Employees Assigned Regular Hours

The determination of work time for employees working regular hours presents no particular problem as the appliaction of the general rule "all time during which an employee is required to be on duty, or to be on the employer's premises, or to be at a prescribed workplace, or is permitted to work whether or not required to do so" in most instances, will suffice to determine work time. Working hours, in the ordinary case, will include all hours from the beginning of the workday to the end with the exception of periods when the employee is relieved of all duties for the purpose of eating meals. However, it might be noted that, in determining over-

Plaintiff's Exhibit No. 1-E—(Continued)

time compensation, the Act permits no averaging of hours over two or more weeks and time lost during one week cannot be made up in the following week without the payment of overtime compensation for hours in excess of 40 in the succeeding week.

Employees Working Fluctuating Hours

The determination of work hours for field employees working a fluctuating number of hours from week to week presents a great variety of individual problems and as stated before, it will be necessary for the supervisory personnel to exercise reasonable, practical judgment in a great number of cases. As the time report form is designed primarily for use of employees working fluctuating hours, the instructions on the covers of the time books are repeated with pertinent comments.

1. Maintenance Work (Equip. Camp, etc.)

Indicate here all time devoted to working on equipment, camp building repair, etc. If working on equipment, write the vehicle number in the space provided and if engaged in other work, write a very brief explanation in the same space.

The above classification is largely self-explanatory; however, it might be noted that an employee is working if he is permitted to work even though not required to do so, and it is obvious that this type of activity must be authorized and controlled by the operators and supervisors so as to avoid unreasonable hours.

2. On Road Driving

Indicate here all time elapsed actually driving to

Plaintiff's Exhibit No. 1-E—(Continued)

and from job, including stops of less than 30 minutes.

This classification is limited to driving to and from jobs. Any incidental or other driving is to be shown opposite Item 6 and explained.

3. Incidental Stop

Indicate here all time in excess of 30 minutes, during which an interruption of the trip occurs and the time elapsed during the stop is work time. Stops for repairing vehicle, waiting for tow, etc., may be considered work time; however, stops in excess of 30 minutes for meals, sleep, or other personal reasons are not to be shown as such time is not work time.

This classification is limited to driving to and f n job.

4. Waiting on Location (Idle Work Time Only)

Indicate here only the idle time during which the employee is required to remain on loaction. Idle time while voluntarily on location may not be considered work time. If the employee while on location is engaged in maintenance work on the equipment or in activity connected with running the job, such time is to be shown opposite the appropriate heading.

The idle time consumed in waiting at the well represents a very substantial portion of the driver's total work time and is the most difficult of the time classifications for which to formulate definite rules to separate work time from personal time. The labor costs for drivers in a particular district will

Plaintiff's Exhibit No. 1-E—(Continued)

hinge largely upon the administrative policy developed in the district for controlling idle time during which drivers are permitted to accumulate work time by remaining idle at the well. It is definitely the responsibility of the operators and the supervisory personnel to make every effort to avoid idle work time by controlling the departure of the trucks and the activities of the drivers at wells.

In general, idle waiting time at the well is work time in those insfances where the interval of time is not sufficient or where facilities are not available for an employee to engage in eating, sleeping or recreational activities. If the interval of time is sufficient and facilities for personal activities are available at the well or within a reasonable vicinity of the well, the driver should be released from duty and the time during the release from duty is not work time and should not be shown on the report.

5. Running Job (List Ticket No. —)

Indicate here all time while on location and actually performing work in connection with running the job, including hooking-up, running job, breaking-down, etc.

6. Other Work

Indicate here all working time which is not covered by any of the other headings.

The above heading may cover any number and variety of activities such as telephone duty, etc. Opposite this heading, practically all of the time of the regular hour employees will be listed and also

Plaintiff's Exhibit No. 1-E—(Continued)

a considerable portion of the work time of irregular hour employees other than drivers.

Night Telephone Operators

The following formula for determining the work time of Night Telephone Operators will apply in all instances where sleeping accommodations are provided for the employees. The total of the time calculated in accordance with the instructions shall be considered work time.

(1) All time elapsing between the time reporting for duty and 10:00 P. M. and between 7:00 A. M. and quitting time, less any time devoted to personal pursuits, sleeping, eating, etc.

(2) Actual working time between 10:00 P. M. and 7:00 A. M., that is, time out of bed and actually engaged in Company activity such as preparing reports, maintenance work, etc.

(3) Time consumed by miscellaneous disturbances of Company nature between 10:00 P. M. and 7:00 A. M. which is not included under Item 2 above. It will be necessary for the employee to estimate the total of the time under this Item as accurately as possible, and add to the time determined under Items 1 and 2 above. A brief explanation of the disturbances and the time involved in each is to be written on the face of the time report. Ordinarily the time under Item 3 will represent but a small portion of the total.

Transfer Time

A letter form has been provided which relieves an employee from duty at one location and in-

Plaintiff's Exhibit No. 1-E—(Continued)

structs him to report for duty at another location within the same district or in another district at a specified time. This form is not applicable if actually moving Company equipment on the transfer.

The letter is to be used on all ordinary transfers of employees and no work time is to be allowed or shown during the period between the time relieved from duty at one location and reporting for duty at the destination. The employee will be reimbursed for travel expense incurred during the transfer time as follows: Common carrier regular fare plus a reasonable allowance for meals and hotel for a period not to exceed the number of days ordinarily required to travel between the locations. Company Emergency Orders issued during the transfer time by the employee will not be honored by the Company.

If the employee is transferred between pay roll districts, it is essential that the "Transfer Memorandum" form showing the pay roll information be completed and forwarded to the superintendent of the district into which the employee is transferred.

Section VI—Pay Roll Procedure

General Instructions

A new pay roll sheet (HOWCO Form # 491) has been devised to be used for all employees subject to the provisions of the Wage & Hour Law. All subject employees will be carried on this pay roll form whether working on the "Regular Workweek Plan", the "Irregular Workweek Plan", or on

Plaintiff's Exhibit No. 1-E— (Continued)

"Hourly Rate Basis". The old style pay roll will be used for all exempt employees.

Pay rolls will continue to be made up in present Pay Roll offices of the Division from Daily Time Reports turned in by all subject employees each day. The various locations must mail their Daily Time Reports to the Pay Roll Office of the Division periodically so they can be posted to the pay roll which must be mailed to Dun n within three days after the expiration of the pay period.

Daily Time Reports for each individual shall be grouped and the time reports arranged in acordance with the listing on the pay roll sheet. The time reports must accompany the pay roll to Duncan. Hours shown on the pay roll if not supported by a Daily Time Report will not be paid, so it is most imperative that the total hours as shown on the pay roll agree with the total of each individual's Daily Time Reports.

Because of the increase in detail connected with preparing the pay rolls, checks now will probably not reach the field employees before the tenth and twenty-fifth of the month.

Preparation of Pay Roll

1. Separate pay rolls shall be prepared for each group of employees working under the same "Workweek Plan". That is, all employees working on the "Irregular Workweek Plan" shall be grouped together, and all employees working on the "Regular Workweek Plan", etc., shall be grouped together.

Plaintiff's Exhibit No. 1-E—(Continued)

a. List employees on each pay roll by location and in strict alphabetical order, regardless of occupation.

b. The surname of each employee will be entered first on the line, followed by the exact, full, first given name, and followed by the middle name initial, if any.

c. Under the heading "Occupation" on the pay roll sheet, please classify each employee according to the attached code list.

2. It is most imperative that every day during a pay period be accounted for on the pay roll sheet. Absences as well as days worked must be shown. The supervisor responsible for the time reports at each location must see that all absences are explained, and until further notice the required information will be supplied by the supervisor on a Daily Time Report form. The symbols to be used for designating absences will be as follows:

a. For the days an employee is absent because of illness fill the spaces with the letter "S".

b. If an employee is off duty because of injury write "I" in the spaces corresponding to the days he was away.

c. "Days Off" should be designated on the pay roll by the symbol "D O".

d. If an employee is on duty but did not work, fill the spaces with zeros "O".

3. Before the District Pay Roll Offices forward the pay roll to Duncan the hours shown on the Daily Time Reports must be balanced with the

Plaintiff's Exhibit No. 1-E—(Continued)

hours listed on the pay roll; the employee's monthly or hourly rate filled in; the overtime pay for each week and the total for the period must be shown. Extensions will be made in the Duncan Office.

Charts showing the overtime pay for both the "Irregular Workweek Plan" and the "Regular Workweek Plan" have been prepared and will cover most cases. In instances not covered in the charts, overtime compensation can be computed by referring to the formulas in the Wage & Hour mimeograph.

Sample Pay Rolls

Sample pay rolls for subject employees have been perepared for each workweek plan in effect.

Sample #1—"Irregular Workweek Plan"

This example illustrates the pay roll to be used for all subject monthly salaried employees working irregular hours.

It is most important that the pay roll for this group of employees account for every day of the pay period, Sundays included.

Sample #2—"Regular Workweek Plan"

Employees customarily working 40, 48 or any number of regularly assigned hours, and if paid on a monthly salary basis, will be carried on this pay roll.

Sample #3—"Hourly Rate Basis".

Only employees working on a straight hourly rate basis will be shown on this pay roll.

PAY ROLL — CODE FOR TIME LOST: (illegible) Injury; Off Voluntary; Off Involuntary; Suspension; Discharged; Quit; Vacation — From 1st To 14th Inclusive Month July 19[illegible] [illegible] Project — District

Exhibit No. 1-F

NAME	ADDRESS	OCCUPATION	Wk. Hrs. W'shed	S	M	T	W	Th	F	S	Hours W'shed	TOTAL HRS	O.T. PAY	TOTAL OVERTIME	RATE	EXTENSIONS	AMOUNT	Insurance No.	Insurance No.	SAVINGS	STATE U.I.	FEDERAL O.A.B.	DEDUCT	EXPLANATION	BALANCE
											0														
				10	10	0	14	8	6	4	54														
Bennett, George [illegible]	Beaumont	Cmtr.		0	4	10	20				34	88			250	00	125	00								
			8			10	5	8	12		35															
				14	0	0	14	8	5	0	41														
[illegible], Charles C.	Beaumont	Comp.		0	10	6	14				30	106			150	00	75	00								
				0	10	6	20	3	0	5	44														
Deane, James T.	Beaumont	H-Y Op.		0	8	14	0				22	66			240	00	132	00								
			10			8	4	14	0		36															
				14	0	10	8	6	0	16	54														
Edwards, John A.	Beaumont	Mech.		0	10	8	8				26	100			200	00	100	00								
				80	150	0	140	10	13	10	98														
Funk, Lawrence P.	Beaumont	H-Op.		0	0	10	4				14	108			225	00	112	50								

Notes:
(1) Lawrence P. Funk is to receive additional compensation for the week July 5 to July 11 inclusive, however, this amount is to be calculated in the Duncan office (8 hrs. @ .74 = $5.92)
(2) [illegible] reports for operators beginning Sunday, July 5, 1942.
(3) [illegible] regular-time line is to be used in posting hours of contract employees.

ks (Signed)

Plaintiff's Exhibit No. 1-F

PAY ROLL CODE FOR TIME LOST: Sickness, Injury, Lay Off, Voluntary, Indefinite, Other Information. From 16th To 31st Inclusive Month July 1942 Gulf Coast District

NAME	ADDRESS	OCCUPATION	REG. HRS. WORKED	S	M	T	W	TH	F	S	HOURS WORKED	TOTAL HRS.	O T PAY	TOTAL OVERTIME	RATE	EXTENSIONS	AMOUNT	INSURANCE NO.	INSURANCE NO.	SAVINGS	STATE U. I	FEDERAL O. A. B	DEDUCT	EXPLANATION	BALANCE
To recommend full payment for 8 days of Sickness.			24					15	A	9	30														
				3	8	8	8	8	8	4	7														
Bennett, George K.	Beaumont	Cntr.		10	8	8	13	14	10		63	106			250 00	125 00									
			30					6	8	12	28														
				10	11	18	0	0	0	0	36														
Cash, Charles C.	Beaumont	C-Dr.		7	4	9	14	3	6		43	107			18000	75 00									
			22					7	8	0	15														
				11	18	9	14	17	6	20	89														
Deane, James R.	Beaumont	E-Y Op.		9	19	7	8	14	3		51	104			24000	18000									
FINAL CHECK			20					17	4	9	30														
				9	9						9														
Edwards, John A.	Beaumont	Mech.										39			200,00	25,00									
We recommend no pay for Voluntary Lay Off of 12 days.			14					L	L	L	0														
				L	L	L	L	L	L	L	0														
Funk, Lawrence P.	Beaumont	W.L. Op.		L	L	10	15	8	10		43	43			22500	28 12									

Notes:

(1) Time for John A. Edwards is figured on the basis of a 16 day pay period -- 8/16 of Semi-Monthly Salary ($100) $25.00

(2) Time for Lawrence P. Funk figured as 4/16 of Semi-Monthly Salary ($112.50) $28.12

(3) James R. Deane is to receive additional compensation for the week July 19-25 inclusive, however, the amount is to be calculated in the Duncan office. (8 hours @ .765 $6.12)

(Signed)

(Signed)

PLAINTIFF'S EXHIBIT NO. 1-G

Erle P. Halliburton, President
Jno. C. Halliburton, Vice-President
A. D. Stoddard, Vice-President
C. P. Parsons, Vice-President

Jay Taylor, Vice President
L. D. Campbell, Secretary-Treasurer
Hugh H. Leonard, Asst. Sec'y.-Treas.

Halliburton
Patented Process
Oil Well Cementing Co.
Duncan, Oklahoma

August 11, 1942

To Division Superintendents

Dear Sir:

The following procedure for issuing new Contracts of employment will explain the policy which has been adopted in this respect:

(1) Enclosed are new contract forms which replace the original type and will be used whenever a new contract is necessary for an old employee receiving a salary increase or for a new employee starting to work. Please destroy all old Contract forms which are on hand in your Division.

(2) One of these contracts should be filled out by the Division office to be signed by the new employee on the date he starts to work. Use the enclosed forms for the new employees and make certain that a contract is signed by each employee as he starts to work and forward it to Duncan immediately.

(3) Since it is impossible for the Division office to know definitely that a salary increase is effective on the date requisitioned until notification is received from the Duncan office, the Duncan Pay Roll office will fill in and forward all contracts necessitated by salary changes of employees. Accompanying the employee's check will be a contract filled out completely except for his signature and a letter explaining that the new contract reflects his change in salary from his previous monthly rate to the new rate and requesting that he sign the contract and return it immediately to the Duncan office. A copy of this letter in each case will be sent to the Division Superintendent.

(4) When an employee has signed one of these new contract forms it will not be necessary in the future to send him a new contract reflecting his change in salary due to the inclusion of the paragraph third from the bottom explaining that in case of an increase in salary the employee will be notified of the change, which rates will be substituted for the rates previously in effect and all other provisions will remain in effect as stated.

We have a new Pay Roll (Howco #556) which will be used for all field employees including those working under the contract plan and regular work-week plan as well as exempt employees, effective on the August 16-31 Pay Roll. On that date please destroy all other remaining Pay Roll forms in use (Howco #491 and Howco #242). In several divisions it will be necessary to start using the new Pay Roll sooner than the August 16-31 pay period.

Whenever your supply of the old forms is exhausted begin immediately on the new forms which will be furnished you; in any case, start using the new forms on the above-mentioned date as we feel that the supply of old forms will be nearly exhausted by that time.

The following instructions refer to use of the new Pay Roll form (Howco #556):

(1) There will be three separate groups of employees to be listed on the pay roll; each group will be carried separately on the Pay Roll and employees in each group will be listed alphabetically by location regardless of occupation. The three groups to be carried on the Pay Roll are:

(a) Subject employees working under the "Contract" plan which is exactly the same group carried previously under the "Contract" plan such as drivers, cementers, etc.

(b) Subject employees not working under the "Contract" plan which includes two classes: Regular Workweek Employees, Hourly Rate Employees.

(c) Exempt employees including Superintendents, Fieldmen, etc. from whom no time reports are required and no daily time will be posted on the Pay Roll.

(2) We wish to emphasize our former instructions that an employee working under the "Regular Workweek" plan is paid a fixed basic sum for 40 (in a few instances 38 or 39) hours of work each week and is paid time and one-half for each hour in excess of 40. When such an employee works a

partial pay period his pay for the time worked shall be computed on an hourly rate and the method of calculation is as follows: reduce the base salary to an hourly rate (base weekly pay divided by 40) and multiply by the number of hours worked. Such an employee will be "docked" for any absence from work which results in the employee working less than 40 (38 or 39) hours in any week unless a recommendation specifically requesting that the employee be paid for such time lost is on the pay roll.

(3) A "Contract" employee is guaranteed a minimum salary for a fluctuating number of work hours and such employees will not be "docked" for days during which no work is performed unless the pay roll received from the field instructs the Pay Roll Department to make such deductions. However, when a "Contract" employee is absent from work due to Sickness, Voluntary Lay Off, etc. as indicated by the appropriate symbol, he will be "docked" for days off unless a recommendation is made on the pay roll that he shall be paid for these days. We request that this procedure be put into use by all Division Pay Roll offices and the method of calculating the amount that the contract employee is to be "docked" is as follows: reduce the semi-monthly base salary to a daily rate (semi-monthly pay dividend by number of days in that pay period, which will be either 15 or 16) and multiply by the number of days lost.

(4) An important change in procedure is that all hours worked in a pay period will be compensated for in the same period as worked. In cases

when Overtime hours are worked in a "split" week they will be paid for then and not in the following period when the week is finished. Hours worked in a "split" week will be carried forward to the column "Wk-Hrs. Paid" of the following pay period only to determine which hours are Overtime hours.

(5) There is no change in the fundamental rules and instructions which have been issued previously concerning filling out of daily time sheets by all subject employees. Before the field pay roll officers forward the pay roll to Duncan, the hours shown on the daily time reports of all subject employees, must be balanced with the hours listed on the pay roll and the procedure after balancing is as follows:

(a) Contract Plan Pay Rolls:

The total hours worked during each week must be filled in the proper column, then the regular time worked (84 hours or less) will be filled in the next column and overtime hours (Hours in excess of 84 in a week) will be entered in the overtime hours worked column. In the case of hours worked in a "split" week and carried forward to the column "Wk-Hrs. Paid" (these hours are paid for in the previous period), although these hours are not included in the totals of the three columns just mentioned to enable balancing with daily time sheets, they must be considered in calculating the part of total hours worked which are overtime hours.

Calculate overtime pay from the chart previously

forwarded to all Division offices of which one copy is enclosed. Column "4", Overtime Hourly Rate, is the rate for one hour of overtime to be multiplied by the number of overtime hours in the week to determine the overtime pay entered on the pay roll for each week.

Enter the monthly rate in the next column, extending the proportionate part of the monthly rate (in most cases one-half of the monthly rate) to the bottom line of the column "Extensions". On the line above enter the total Overtime Pay which is the sum of all overtime pay listed in the Overtime Pay column.

The sum of overtime and regular pay should be shown in the column "Amount".

(b) Regular Workweek and Hourly Rate Pay Rolls:

The total hours worked shall be filled in the proper column, then the regular time worked (which will be 40 hours or less in this case) and the overtime worked (which will be all hours over 40 worked in each week). Overtime pay will be determined from the same chart now in use for this plan. The monthly rate shall be shown and the proportionate part of the monthly rate (in most cases one-half) shall be extended to the column "Extensions" with the total overtime for the pay period entered in the same column on the short-extended line. The amount column shall also be filled in as in the past.

(c) Exempt Pay Rolls:

The employee's monthly rate shall be filled in the column "Rate" and the proportionate part of the monthly rate (in most cases one-half of the monthly base pay) shall be filled in both columns "Extensions" and "Amount".

The sample pay rolls enclosed are intended to clarify the above procedure.

Very truly yours,

HUGH H. LEONARD

Ass't. Secretary-Treasurer

HHL:ks
Incls.

PAY ROLL — CODE FOR TIME LOST: Sickness, Injury; Laid Off, Voluntary, Involuntary; Participation, Discharged; Quits, Vacation

SAMPLE — From 16th To 31st Inclusive Month August 1942 Any District

Plaintiff's Exhibit No. 1-H

NAME	ADDRESS	OCCUPATION	Wk. Hrs. Paid	S	M	T	W	Th	F	S	Total Hrs. Worked	Reg. Time Worked	Over Time Worked	OVERTIME PAY	RATE	EXTENSIONS	AMOUNT	Insurance No.	Insurance No.	Victory Tax	SAVINGS	WAR BONDS	FEDERAL O. A. B.	DEDUCT	EXPLANATION	BALANCE
1 Anderson, Tom L.	Alice	Meh.-Op.	0	12	16	8	8	11½	12	9	73½	73½	0													
				13	10	8	no	no	10	6	55	55	0			.00										
				14	11	e					25	25	0		225.00	11250	112.50									
			0	L	L	L	L	L	L	10	10	10	0			(10 days @ 6.25)										
2 Brown, Jesse A.	Alice	DB-Op.		12	19	12	16	11	14	15	99	84	15	9.82		9.82										
				10	3½	e					13½	13½	0		200.00	69.50	79.32									
			J	9	15	16	2½	15	11½	5	88	84	6	3.96												
				10	12	16	8½	13	5	7	89	83	0			3.96										
3 Farrell, George E.	Alice	DC-Dr.		8	8	e					16	16	0		150.00	75.00	75.00									
																(5 days @ 5.47)										
Employed August 29										8	8	8	0			.00										
4 Anderson, Donald L.	Alice	Meh.		10	12	e					22	22	0		175.00	16.41	16.41									
5																										
6																										
											From 1st				To 15th		Inclusive Month September 194									
			28			11½	12	12	10	0	57	56	1	.74												
Anderson, Tom L.	Alice	Meh.-Op.		0	8	8	8	8	4	0	31	31	0			.74										
He recommend pay for 3 days' Sickness				0	0	0	0	e			0	0	0		0	98.00	112.50	125.00								
			13½			9	8	8	8	8	15	15	0													
Brown, Jesse A.	Alice	DB-Op.		DO	8	4	8	8	12	10	41	41	0			.00										
				0	W	W	W	e			0	0	0		200.00	100.00	100.00									
			16			4	10	12	10	13	55	55	0													
				8	0	15	8	8	6	0	51	51	0			.00										
Farrell, George E.	Alice	DC-Dr.		7	12	10	10	e			39	39	0		150.00	75.00	75.00									
			22			10	12	10	13	14	65	62	3	1.71		(7 days @ 5.47)										
				10	12						22	22	0			1.71										
Anderson, Donald L.	Alice	Meh.													175.00	36.29	40.00									

Never [illegible] hours were worked in the last "split" week of the pay period, overtime pay would be made in the pay period in which the hours were worked.

Mr. Anderson at 8-31 pay roll since no recommendation was made by field office requesting pay for 6 days' voluntary lay off. When Mr. Brown he was "docked" for these days.

Note for 1-15 pay roll a recommendation being made by the field office requesting pay for 3 days' sickness, his semi-monthly rate was entended in full.

TOTALS

(Signed)

EXHIBIT "H"

PLAINTIFF'S EXHIBIT NO. 1-I

Halliburton Oil Well Cementing Company
Duncan, Oklahoma

Application of Biweekly Payroll Plan to Contract Employees

Mimeograph No. III

Introduction

This Mimeograph, which will be referred to as Mimeograph No. III, relates to all field employees working under the "Contract Plan". Effective Sunday, January 30, 1944, the new style payroll, Biweekly Contract Payroll, will replace the payroll Howco #606 for all "Contract" employees. The new form will not be used for employees working under other arrangements (Regular Workweek, Hourly Rate and Exempt Plans); payrolls for these groups will be computed semimonthly on Form Howco #606 as previously.

Preparation of the Payroll

There is no change in the fundamental rules and instructions previously issued for showing the name, address and occupation of each employee on the payroll. Hours worked each day should be posted with care and accuracy and a total of the hours worked in each week should be shown in the proper column.

The method of completing the following columns is in drastic contrast to our former practice. The line for each week has been divided to provide for regular time and overtime computations. The regu-

lar time hours worked will be 40 hours or less when the employee actually has less than 40 working hours in the week; all remaining hours in excess of 40 will be shown as overtime hours worked. In each week the total of regular and overtime "Hours Worked" will equal the "Total Hours Worked".

The "Rate" for the regular time line will be obtained from Column (3) "Regular Hourly Rate Per Contract (1st 40 hrs)" of the Payroll Chart Applicable to Field Employees Working Under the Contract Plan, which is now used for completing the employment contract forms; the overtime "Rate" will be obtained from Column (4) "Overtime Hourly Rate" of the same chart. The rates will be set in for each week of the pay period and "Extensions" will be a result of the "Rate" multiplied by the "Hours Worked".

The sum of overtime and regular time extensions for each week will be shown in the column "Total".

The "Guaranteed Weekly Rate", which is Column (2) of the chart for contract employees previously referred to, will be shown for each complete week. When an employee works for only a partial week as occasioned by new employment, termination, etc., one-seventh of the weekly guarantee may be considered a daily guarantee for the number of working days in the week and will appear in the column "Guaranteed Weekly Rate" for the specific partial week.

To determine the "Additional Compensation Per Weekly Guarantee" deduct the "Total" from the "Weekly Guarantee" and the remainder, if any,

will be "Additional Compensation" due. The weekly earnings will be the sum of columns "Total" and "Additional Compensation per Guarantee". The sum of the two "Weekly Earnings" will be shown in the column "Amount".

Preparation of the Payroll Distribution

Prepare the monthly payroll distribution, Howco #441, to cover the full calendar month for "Contract" employees as well as those working under other wage or salary plans. The distribution figures should be shown in percentage terms and should be forwarded to Duncan promptly after the close of each calendar month. It will not be necessary to show any earnings or amounts on the form, the charge to each Department will be calculated in the Duncan Office from the percentages listed.

Preparation of Authorization for Change in Pay Status

Effective January 30, 1944 all "Contract" employees' salary rates will be stated as weekly sums, so the weekly rates, obtained from column (2) of the chart, will appear on all future salary authorizations. We will make use of the present authorization form (Howco #667) until the supply is exhausted and suitable revision can be effected.

It will be necessary for you to write on the form "per week" following the amounts "From" and "To", as "per hour" or "per month" will not be applicable.

On the lower part of the form "Increases for Prior Twelve Months" it will be simpler to show

the weekly increases as from a specified amount to a specified amount rather than the amount of the increase. Until the form can be revised the following example will illustrate adaptation of the proper method for showing the employee's salary record.

Increases for Prior Twelve Months

Merit			Promotion		
Emp 3/1/43	$150	6/1/43	150-165	From B III b 6	to B III b 1
Date	Amount	Date	Amount	Symbol	Symbol
2/1/44	38.08 to 40.38				
8/1/44	40.38 to 43.85				

Since the pay period for "Contract" employees will begin every second Sunday following Sunday, January 16, 1944, authorizations for salary changes must necessarily become effective on a Sunday which initiates a biweekly pay period.

Authorizations for Change in Pay Status for employees other than those working under the "Contract" plan will not be affected by these instructions. They will be completed as formerly to become effective on the 1st or 16th day of the month.

New Employees (Application & Contract)

Since all "Contract" employees will be carried at a weekly salary on all pay records their "Rate of Pay" on the Application for Employment should be stated as a rate per week. All employees hired under plans of compensation other than the Contract Plan, will be paid on either a monthly salary or hourly rate as previously.

It is still essential for a "Contract of Employment" to be completed and signed by each new "Contract" employee. The guaranteed weekly salary and regular hourly rate will be obtained from columns "2" and "3", respectively, of the charts.

Supplementary Biweekly Contract Payroll

A new form "Supplementary Biweekly Contract Payroll", Form 606-B, is modeled after the new payroll form and will be used for "Contract" employees instead of the Supplementary Payroll, Form 556-A.

SAMPLE

Plaintiff's Exhibit No. 1-J

16

WEEKLY CONTRACT PAY ROLL — From January 30 1944 To February 12 1944 Inclusive — East Texas District

	NAME	ADDRESS	OCCUPATION	S	M	T	W	Th	F	S	Total Hrs.	Rate	Earnings	Total	Guaranteed Weekly Rate	Total Comp. for Guarantee	Weekly Earnings	Amount	Insurance No.	Insurance No.	Bond No.	Other Deduct.	FIC	Check No.	Explanation	Balance
		Transferred from Corpus Christi		15	16	10	12	11	10	10	84	44	.738	34.54		(a)										
												40	.82	20.80	5636	5636	04	5632							
												44	.738	34.54												
1	Armour, Jane F.	Haskins	Tate.	10	12	9	8	17	20	16	92	40	.82	20.80	6132	5538	-0-	6132	11700						
												14	.738	11.80		(b)									
				8	8	8	8	8	8	8	56	40	.47	18.80	3040	5077	2037	5077							
												22	.738	15.36											
2	Hopley, Max E.	"	Mech.	8	10	8	10	10	8	8	62	40	.47	18.80	3478	5077	1602	5077	10154						
												22	.905	19.91		(c)									
				10	12	8	6	11	5	10	62	40	.82	23.80	4351	6346	1995	6346							
												8				(d)									
3	Jones, John H.	"	Cntr.	L	L	L	L	L	10	17	27	27	.82	18.98	1593	1813	220	1813	8169						
												75	.82	42.78		(e)									
		Discharged 2/8/44		15	18	12	10	12	16	17	118	40	.38	15.20	5795	4036	-0-	5795							
												0				(f)									
4	Smith, Robert H.	"	C-Dr.	10	0	0	0				10	10	.38	3.80	380	1751	1351	1731	7526						
5																									
6																									
7																									
8																									
9																									
10																									
11																									
12																									
13																									

Notes:

(a) The weekly guarantee of $55.38 is obtained from column (2) of the "Contract Plan" payroll Chart opposite the monthly equivalent of $240.

(b) The weekly guarantee of $50.77 is obtained from column (2) of the "Contract Plan" Payroll chart opposite the monthly equivalent of $220.00

(c) The weekly guarantee of $63.46 is obtained from column (2) of the "Contract Plan" Payroll chart opposite the monthly equivalent of $275.

(d) The weekly guarantee is calculated for the partial week of two working days; that is, 2/7 of $63.46=18.12

(e) The weekly guarantee of $40.38 is obtained from column (2) of the "Contract Plan" payroll chart opposite the monthly equivalent of $175.

(f) The weekly guarantee for the three working days of the week is calculated as 3/7 of $40.38 = $17.31.

TOTALS

(Signed) — PAY ROLL CLERK — EXTENSIONS OK — (Signed) FIELD CLERK — EXTENSIONS OK — DUNCAN OFFICE

14f EXHIBIT "J"

PLAINTIFF'S EXHIBIT NO. 1-K

Dear Sir:

Enclosed is a new contract of employment reflecting your salary change from $.....per month to $.....per month, effective on....., 1942 which is also the effective date of the contract.

Please sign this contract and return it to the Duncan Office immediately so that our records may be kept current.

Very truly yours,

.....

Secretary-Treasurer.

fh

Enc.

cc: Division Superintendent

PLAINTIFF'S EXHIBIT NO. 1-L

September 28, 1943

Dear Sir:

Since the date of your Employment Contract, signed....., 194. the provisions relating to compensation have been changed as follows:

The regular basic rate per hour has been increased from.....cents to.....cents. The sum guaranteed for each workweek has been increased from $.....to.....

The guaranteed weekly minimum of $..... is equivalent to a monthly salary of $.....

Yours truly,

.....

Ass't. Secretary-Treas.

HHL:ks

PLAINTIFF'S EXHIBT NO. 1-M

Halliburton Oil Well Cementing Co.
Duncan, Oklahoma....., 1944

Mr.....
.....
.....

Dear Sir:

You are advised that your increase in guaranteed minimum weekly salary from $..... to $..... has been approved and will be effective as of....., 1944. This results in an increase of your regular basic hourly rate from .....cents to.....cents.

Yours very truly,

.....
W. R. McCLENDON,
General Superintendent

PLANTIFF'S EXHIBIT NO. 1-N

XY-116

U. S. Department of Labor
Wage and Hour Division

Address all communications to:
Wage Hour Division
H. W. Hellman Bldg.
354 So. Spring St.
Los Angeles, Calif.

In reply refer to File No. 4-2279.

August 8, 1941

Halliburton Oil Well Cementing Co.
1709 West 8th Street
Los Angeles, Calif.

Gentlemen:

The Wage and Hour Division is conducting a nation-wide drive to establish compliance with the provisions of the Fair Labor Standards Act.

In order to determine whether your business comes under the jurisdiction of the Division with respect to interstate commerce, we ask that you fill out the attached form and return it here at once in the enclosed envelope, which requires no postage. We are also enclosing for your information a copy of the Employer's Digest of the Act.

Thank you for your cooperation.

Very truly yours,

J. A. STELLERN

J. A. Stellern

Branch Manager

Attachments:

AD-85

Employers' Digest

Envelope

PLINTIFF'S EXHIBIT NO. 1-O

Halliburton

Patented Process

Oil Well Cementing Co.

Duncan, Oklahoma

August 19, 1941.

Ben F. Saye

General Counsel

Robert O. Brown

Earl Babcock

Marvin Brummett

Harry O. Lambert

Attorneys

Mr. John A. Stellern,

Branch Manager, Wage Hour Division,

H. W. Hellman Building

354 South Spring Street,

Los Angeles, California.

Re: Your File No. 4-2279

Dear sir:

Your letters of August 8 addressed to this

company at its Los Angeles and Ventura, California, offices have been forwarded to this office to answer.

Halliburton Oil Well Cementing Company is engaged in the business of manufacturing and selling oil field equipment and in various service activities such as oil well cementing, acidizing, testing, electrical well logging, etc. Its equipment is available for service in all of the oil fields in the United States and it is actively engaged in business in seventeen different States. Its general office is at Duncan, Oklahoma, where its books and records are kept, showing names of all of its employees, the amount of wages paid them, the hours worked, etc. All pay roll checks are issued from its Duncan, Oklahoma, office.

We have received inquiries from other States outside of Region 14 but, since our general office is located in Region 14, the inquiries from States outside that Region have been referred to Mr. G. C. Street, Jr., Regional Director for Region 14, whose office is 824 Santa Fe Building, Dallas, Texas.

This company is complying with the Wage and Hour Law and has had but one problem that has caused any difficulty. That problem is what constitutes "hours worked" for some of our field employees or service men who operate our service equipment. These men are subject to call for duty twenty-four hours per day but, actually, work a comparatively few hours per day. We have discussed this problem with the Wage and Hour Division for this Region and they are thoroughly

familiar with the problem and with our arrangement with our employees.

As this company is operating in States located in ten of the fifteen Wage and Hour Division Regions, it would be a great convenience to us if inquiries from the various Regions could be referred to the Wage and Hour Division for this Region, and if it would be satisfactory to you to refer this matter to the Regional Director of this Region, we would appreciate your doing so. If such an arrangement would not be satisfactory with you, we will complete and forward you the statements of compliance which you mailed to our California offices.

Will you please advise me in this regard?

Very truly yours,

BEN F. SAYE

BFS:bb
cc-HOWCCO at
Los Angeles, Calif.

PLAINTIFF'S EXHIBIT NO. 1-P

U. S. Department of Labor
Wage and Hour Division

Address all Communications to:
417 H. W. Hellman Bldg.
354 South Spring Street
Los Angeles, California

In Reply Refer To: File No. AMcA:mgo.

September 3, 1941.

Halliburton Oil Well Cementing Co.
Duncan, Oklahoma

Attention: Ben F. Saye, General Counsel

Gentlemen:

This will acknowledge your letter of recent date in regard to our request that you subimt our form entitled Inforamtion Respecting Compliance With The Fair Labor Standards Act of 1938. We are referring this matter to our Regional Office in San Francisco with the recommendation that the inspection of this company be handled through your main office in Duncan, Oklahoma. Unless you hear otherwise from us it will not be necessary for you to submit the form through Los Angeles.

Very truly yours,

ANSON McARTHUR

Anson McArthur
Acting Branch Manager

Mr. Bertram: Mr. Lacy, will you come forward, please? [4]

JOHN ELMER LACY,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: John Elmer Lacy.

The Clerk: Will you take the stand, please?

By Mr. Bertram:

Q. Mr. Lacy, are you employed by the Halliburton Oil Well Cementing Company?

A. Yes.

Q. In what capacity?

A. Superintendent of the California Division.

Q. How long have you been employed by the company? A. Twenty-three years.

Q. How long as superintendent?

A. Since July, 1940.

Q. Mr. Lacy, there is a stipulation in evidence to the effect that the company operates in a number of states in the United States. Can you tell us how the company is organized with respect to its operations?

A. Well, its headquarters are at Duncan, Oklahoma, and I believe there are eight other divisions.

Q. And you are superintendent of one of those divisions? A. Of one of those divisions. [5]

(Testimony of John Elmer Lacy.)

Q. Which division is that?

A. California Division.

Q. What are your duties, Mr. Lacy?

Mr. Sandmeyer: I object to that as being too broad. He may have innumerable duties not pertinent to this case.

Mr. Bertram: I will rephrase the question.

Q. By Mr. Bertram: Are you in charge of the personnel matters in the California Division?

A. Yes.

Q. Do you do the hiring and firing?

A. Part of it, I would say.

Q. Do you receive from the headquarters office in Duncan and issue instructions to the individuals under your control? A. Yes, sir.

Q. With respect to hours, wages, and working conditions? A. Yes.

Q. Do you have with you, Mr. Lacy, the records called for by the subpoena, which was served upon the company by delivering a copy to you?

A. I believe I do, yes, sir.

Q. Do you have them here in court?

Mr. Sandmeyer: We have the originals, Mr. Bertram.

Mr. Bertram: May it please the Court, may we have these marked for identification as plaintiff's exhibit next in [6] order. The individual page numbers may be identified by the date and page number that are already on the contract.

The Clerk: It will be Plaintiff's Exhibit 2.

Mr. Sandmeyer: For identification?

(Testimony of John Elmer Lacy.)

The Clerk: For identification.

(The document referred to was marked as Plaintiff's Exhibit 2, for identification.)

Mr. Bertram: At this time, if there is no objection from counsel, I will offer those as Plaintiff's exhibit next in order.

Mr. Sandmeyer: There is no objection. May we have the privilege of substituting copies for the originals upon stipulation of counsel they are true copies?

Mr. Bertram: I so stipulate.

The Court: So understood.

The Clerk: Plaintiff's Exhibit 2 into evidence.

(The document referred to was marked as Plaintiff's Exhibit 2, and was received in evidence.)

The Court: I might ask you, is it one of the government's objections to the defendant they are paying these men when they do not work? That that should be stricken out and the man should be put on a straight hourly basis with the minimum as required by the Fair Labor Standards Act?

Mr. Bertram: Not at all.

The Court: That is new in this case. I have not had [7] a case where a company paid men who do not work, whether working or not. As I understand it, that is one of the objections of the government.

Mr. Bertram: No.

The Court: Or I mean the defendant. To put it another way, if the verdict were given here in

(Testimony of John Elmer Lacy.)

favor of the government the defendant can strike out that gaurantee entirely and just pay for the hours worked? That would be legal; would it not?

Mr. Bertram: The manner in which the defendant puts the government's position could be no further from the government's position than it could be possible to state. We don't think the defendant is required to put its employees on the hourly rates and pay them at the hourly rates only for the hours they work. We do contend that having paid them what in our view amounts to monthly or weekly salaries they must compute those overtime hours by dividing those salaries by the number of hours worked—and the defendant kept track of the hours they worked—and they arrive at the hourly rate in that manner. And for every hour worked over 40 pay an amount, in addition to the monthly salary, of one-half that hourly rate.

For an employee receiving $50.00 on the guaranteed basis, and if he worked this week 50 hours, we say that employee should receive that $50.00 plus one half dollar, being one-half of the hourly rate secured by dividing the [8] number of hours worked into the amount of money paid for each hour over 40, or $5.00; and a total amount of $55.00. That is the position of the government.

The Court: You have not quite gotten my point. If the government should get a verdict here against the defendant there could be no objection if the defendant then eliminated their guarantee of so

(Testimony of John Elmer Lacy.)

much every week, whether a man worked or not, and then put the man on a minimum basis, such as you suggested?

Mr. Bertram: If they want to do that, that is their privilege. There is no requirement in the Act that they do, and we don't contend they do.

The Court: That is what I want to get clear. In other words, they could strike out the guarantee they give these men when they do not work and put them under a straight basis, which is required by the Fair Labor Standards Act.

Mr. Bertram: Yes. In other words, our position, briefly stated, is this: That the method of payment is significant in that it proves the men were not paid on the hourly rates stipulated in the contract.

Mr. Sandmeyer: I would like to ask counsel right there, so we will understand, the Court and ourselves understand counsel better, they claim that they were paid a monthly salary or weekly salary only by virtue of the fact we paid the guarantee in accordance with their contract.

Now, there must be a situation as decided by the United [9] States Supreme Court in the Belo case. I would like to ask counsel, taking the Belo case that was held to be valid, what would they have the Belo Corporation do when an employee worked less than 40 hours or worked less than enough to earn the guarantee, should the defendant Belo Corporation fulfil their contract or should they violate

(Testimony of John Elmer Lacy.)

it and pay the employee something less than they are obligated to pay?

Mr. Bertram: If your Honor please, we would like to get the evidence in. Of course, we will have an opportunity to argue our respective positions, and whatever contentions are met in the briefs we will attempt to answer.

The Court: Yes. Proceed.

Q. (By Mr. Bertram) Mr. Lacy, will you look at Plaintiff's Exhibit 1-D through 1-P, and tell us if you know what those are.

Mr. Sandmeyer: I submit they are in evidence, and the stipulation covers them and they speak for themselves.

Mr. Bertram: This is preliminary.

Mr. Sandmeyer: Let's go from there.

The Witness: Well, this No. 1-D——

Mr. Bertram: Let me withdraw the question. As counsel has stated, we have stipulated these are instructions issued to the Division Superintendents, of which you are one. They have to do, in part, with the preparation of payrolls and the accounting for and paying for time worked.

Q. By Mr. Bertram: Can you tell us whether or not the [10] payroll records which have been introduced as Exhibit 2 were prepared in accordance with the instructions received by you?

A. That was our intentions.

Q. Mr. Lacy, do you exercise supervision over the preparation of the payrolls?

A. Well, I do not compute them.

(Testimony of John Elmer Lacy.)

Q. I mean do you exercise general supervision, is that one of your duties? A. Yes.

Q. Who is in immediate charge of the preparation of the payrolls?

A. Well, Harry Miles was for quite some time.

Q. During what period of time?

A. Well, he still supervises them if there is anything they don't know in regard to them. But he doesn't compute them at the present time, unless there is some question arises.

Q. He still exercises some supervision over their preparation? A. Yes.

Q. During the period with which we are concerned, July 1st, to the present time, that has been one of his duties?

A. Yes. Of course, oftentimes he doesn't look at the payroll at the present time.

Mr. Bertram: No further questions. [11]

Mr. Sandmeyer: No questions.

The Court: That is all.

Mr. Bertram: You may step down.

(Witness excused.)

Mr. Bertram: I will call Mr. Miles.

HARRY R. MILES,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Harry R. Miles.

The Clerk: Will you be seated, Mr. Miles.

By Mr. Bertram:

Q. Mr. Miles, are you employed by the Halliburton Oil Well Cementing Company?

A. Yes, sir.

Q. In what capacity?

A. Office supervisor, bookkeeper.

Q. In that capacity do you exercise supervision over the preparation of the payrolls for the Halliburton Oil Well Cementing Company?

A. Yes, I do.

Q. Mr. Miles, are you famiilar with Plaintiff's Exhibits 1-C through 1-J, which I am exhibiting to you now? A. Yes, I am. [12]

Q. Were those instructions with reference to the preparation of the payroll and the accounting information and paying for hours worked carried out by you or by employees under your supervision in the preparation of the payrolls?

A. According to your interpretation of the instructions.

Q. Yes. Now, referring your attention particularly to Exhibit D on page 4, the paragraph which is numbered 2, instructs that each day be accounted for on the payrolls? A. Yes, that is right.

(Testimony of Harry R. Miles.)

Q. And it further instructs that such accounting must be done by an appropriate symbol. I want to direct your attention, Mr. Miles, to Exhibit H, at the top of which appears the words "Code For Time Loss", and after that certain symbols, and I will ask you to explain those, if you will. First, the "S".

A. The "S" stands for sickness, absence due to sickness.

Mr. Bertram: Before we go further, if the Court would like a copy of this we have additional copies, if you would like to follow the testimony.

The Witness: The "I" represents an absence from work due to an injury. The "L" represents a voluntary layoff from work. The "X" is an involuntary layoff. "P", suspension. "D", discharged. "Q", quits. And "V" for vacation.

By Mr. Bertram:

Q. Yes. Now, in each day, if one of [13] those symbols is not used, what figure is entered?

A. The time worked.

Q. The number of hours worked on that day?

A. The number of hours worked on that day.

Q. Certain entries are made of a cipher, a zero. What would that signify?

A. Well, if you want my interpretation of that, it would be that the man was available for work but didn't actually perform work on a job. He might be on call. It is supposed to mean anything but his regular day off. That is a day he would be paid for but not actually performing work.

(Testimony of Harry R. Miles.)

However, I want to say here that very often that symbol was used to indicate a day off. A man would have a day off coming to him, and he might put a zero instead of the "D. O." as he should have done.

Q. You have mentioned "D. O.", will you explain that symbol? It is not listed on the chart.

A. It is not listed on here (indicating). It is a symbol supposed to be used on the time ticket to indicate a day that was taken, a day coming to him off work.

Q. Then in each space where there is provision for entry under the day of the week there is entered either the number of hours worked for that day, a zero, a "D. O." or one of the symbols which appears at the top of the payroll; is that correct?

A. That is correct, yes. [14]

Q. Will you refer, Mr. Miles, to Exhibit G, on page 3, and the paragraph numbered 3, can you tell us briefly what the instructions are with respect to docking an employee, as explained in that paragraph?

A. Well, it says, "When a contract employee is absent from work, due to sickness; voluntary layoff, etcetera, as indicated by the appropriate symbol he will be 'docked' for the days off, unless a recommendation is made on the payroll to be paid for those days."

Q. Is there any way, by examining the payroll, to tell whether an employee has been docked during the payroll period, for any reason?

(Testimony of Harry R. Miles.)

A. There should be.

Q. In what way?

The Court: Here is a full statement of what you are asking, Counsel, on the exhibit which has been shown to me. Referring here to "On August 16-31 payroll since no recommendation was made by field office requesting pay for six days' voluntary layoff of Jesse A. Brown he was 'docked' for these days. On September 1-15 payroll a recommendation being made by the field office requesting pay for three days' sickness, his semi-monthly rate was extended in full."

Mr. Bertram: Yes. These are sample payrolls which are part of the instructions.

By Mr. Bertram:

Q. Are those entries made on the original payrolls to indicate whether an employee has been [15] docked for an absence or not?

A. Yes, it was our intention to, our purpose to do that.

Q. Would there also be, on such a payroll, the entry of so many days at such a rate?

A. It should be there.

Q. Will you tell us, Mr. Miles, how the daily rate was computed when an employee was to be paid at a daily rate, or stated the other way, when he was to be docked at a daily rate?

A. Up until the time we commenced to use this bi-weekly payroll form his half month's equivalent was divided by the number of days in that particular payroll, either 15 or 16.

(Testimony of Harry R. Miles.)

Q. So that his daily rate would fluctuate, depending on how many days there were——

A. In the particular payroll period in question.

Mr. Sandmeyer: Will the witness speak just a little louder, please?

The Witness: All right.

Mr. Bertram: May I make a statement at this time, your Honor? We have been referring to Exhibit H and the government will confine its testimony to Exhibit H. That is, with respect to the sample payrolls, to Exhibit H, and to Exhibit J.

One other form of payroll appears there, but was just for only about one month. We feel we don't want to go into that [16] payroll.

Q. By Mr. Bertram: Directing your attention, Mr. Miles, to Exhibit H, will you explain what entries are made in the column entitled "Week-Hours Paid"?

A. Since the work week, a man's work week is the calendar week, it is very possible that the payroll period would commence in the middle of a week. And it was necessary to show on this payroll any hours that were worked falling in the preceding payroll period, which would affect the work week ending on the payroll in question. In other words, it was necessary to know how many hours he had worked in a split week in order to arrive at the amount of money that would be due him over the 40 hours. I believe you refer to this (indicating)?

Q. Yes. For example, in the case of Tom C. Anderson for the payroll period of the first to

(Testimony of Harry R. Miles.)

the 15th of September, 1942, appearing on line 7, which we can use as an example throughout, in explaining these entries, the figure "28" appears in that column.

A. Those were the hours that this man worked on Sunday and Monday, falling in the previous payroll period.

Q. What hours are entered in the column entitled "Total Hours Worked"?

A. Those represent the hours worked from the commencement of this payroll period until the end of the work week.

Q. They do not then include the hours worked in that [17] work week in the preceding payroll period? A. No, sir, they do not.

Q. Is there any place on the payroll where the two figures are totaled? A. No, there is not.

Q. So that in order to know how many hours are worked, let me ask you the question: How is it possible to know how many hours the employee has worked in the work week?

A. Simply by computing it aside from the payroll. There is no place on the payroll to compute it.

Q. In other words, by adding the figure in the column "Week-Hours Paid", and the figure in the column "Total Hours worked"?

A. That is right.

Q. What entries are made in the column entitled "Regular Time Worked"?

A. That is dependent upon the total you get by adding, say, the 28 hours and the 57 hours. The

(Testimony of Harry R. Miles.)

total of those two figures is 85; or 85 hours. For the purpose of the payroll, and computing it, as we have here, we figure that the 84 hours have been taken care of. He has been paid for his 84 hours, under his contract. And since he has actually worked 85 hours in this particular work week we then show the one hour additional in a separate column, in order to establish an additional amount due him over his guaranteed weekly salary. [18]

Q. Then what is the figure that is entered in the column "Regular Time Worked"?

A. It is the difference between the——

Mr. Sandmeyer: Did you say regular time worked, Mr. Bertram?

Mr. Bertram: Regular time worked.

Mr. Sandmeyer: I see.

The Witness: You asked me—will you ask that again, please?

Mr. Bertram: Will you read the question?

(The question was read.)

The Witness: If it is proven, for instance, that the man has worked one hour over his 84, that one hour, subtracted from the number of hours he has worked—it is a little difficult for me to explain this. Take the 1 hour away from the 57, and the 56 here appears in the "Regular Time Worked" column. I don't feel I have made that very clear. It is a little difficult to explain.

Q. By Mr. Bertram: Let me state my understanding of it, and you can correct me if my understanding isn't correct. A. Yes.

(Testimony of Harry R. Miles.)

Q. The first computation is the addition of the figure in the column "Week-Hours Paid" and the figure in the column "Total Hours Worked", and the result is 85? A. That is right.

Q. From that you deduct 84 to get what you call the [19] overtime worked?

A. Well, he has had overtime worked, additional pay due him for that 1 hour. His guarantee is being paid for 44 hours of overtime.

Q. Before we carry through the computation, what entries are made in the column entitled "Overtime Worked"?

A. Any number of hours over 84.

Q. So in this example the man having worked 85 hours, in the work week, you substract 84 and the difference is the number of over time hours worked, which you enter in that column?

A. That is the number that appears in that column.

Q. And then that same number, in this case 1, will be substracted from the figure in the column entitled "Total Hours Worked"?

A. That is right.

Q. And that difference will be entered in the column entitled "Regular Time Worked"?

A. Regular time worked.

The Court: We will now recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2::00 o''clock p. m.) [20]

Los Angeles, California,
Tuesday, May 16, 1944. 2:00 P. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. L. Metcalfe Walling against the Halliburton Oil Well Cementing Company for further court trial.

The Court: Are both sides ready?

Mr. Bertram: Both sides are ready, your Honor.

Will the reporter please read the last question and answer of the morning session?

(The record was read.)

HARRY R. MILES,

recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued)

Q. By Mr. Bertram: Directing your attention, Mr. Miles, to the column entitled "Overtime Pay", what entry is made in that column? And using as an example the same employee considered earlier this morning, Mr. Anderson, on line 7?

A. In that column is the additional pay that this man is to get for the extra hour over the 84 he has worked in that work week.

Q. In that example the rate is 74 cents, is it not?

A. Yes, sir, over time, 1 hour overtime would be [21] 74 cents.

Q. Where would the 74 cents come from?

A. It is one and a half times his regular rate of pay, hourly pay as guaranteed by the contract.

(Testimony of Harry R. Miles.)

Q. Let me ask you this, Mr. Miles: Isn't it true that the overtime rate is not always exactly one and one-half times the hourly rate specified in the contract, but is sometimes slightly over that rate?

A. It is possible it is. It is just a fraction there.

Q. In other words, that rate would not be secured by multiplying the hourly rate in the contract by 150 per cent?

A. Well, it could be. Of course, we had our charts we used in arriving at these figures.

Q. By the chart do you mean Exhibit C attached to this; Exhibit 1-C? A. Yes, that is correct.

Q. In other words, the overtime hourly rate would be secured from column 4 of the chart, Exhibit 1-C? A. That is correct.

Q. In the column entitled "Rate", what entries appear in that column, Mr. Miles?

A. Just a second.

Q. Exhibit H?

A. The rate is the monthly equivalent of his weekly guarantee.

Q. In the next column, the column entitled "Extensions," [22] that column I notice is divided into two parts. Will you explain what entries go in each column?

A. In the lower section is extended one-half of the monthly equivalent. In the upper section would be any accumulated amounts due this man appearing in the column entitled "Overtime Pay".

(Testimony of Harry R. Miles.)

Q. And in the column entitled "Amount"——

A. It would be the total of the two.

Q. That would represent his gross pay before such deductions as social security and so forth?

A. Yes, sir.

Q. Mr. Miles, on the same exhibit, Exhibit H, would you direct your attention to the entries made for Donald H. Savage on line 4? Looking across that line there is the following notation, "3 days at $5.47". Will you explain that notation, please?

A. This man has worked three days in the pay period, consisting of 16 days. In a split pay period we took his half month rate and divided by the number of days in this particular half, 16. divided by 16.

Q. That equals $5.47?

A. That would equal $5.47. We would pay him 3/16th.

Q. I direct your attention now, Mr. Miles, to Exhibit J, which is the present form of bi-weekly payroll. Refer now to the column headed "Total Hours worked", what entries are made in that column, Mr. Miles? [23]

A. That figure represents the total number of hours worked in the work week.

Q. In other words, then a different entry is made in this column from that that would have been made in the column entitled "Total Hours Worked" in the previous exhibit?

A. That is true. This is a bi-weekly payroll and no hours accrued for it from the preceding one.

(Testimony of Harry R. Miles.)

Q. I see. The symobls in the column immediately after the colump headed "Total Hours Worked" are "O. T." and "R. T." Will you explain those, please?

A. The "R T" signifies the number of regular hours worked, which would be hours up to 40. And the "O T" is overtime, hours worked beyond 40 in a work week.

Q. Those hours are entered respectively after those symbols in the column entitled "Hours Worked"? A. Yes.

Q. What rates appear in the column entitled "Hourly Rate"?

A. In the "R T" section appears the hourly guaranteed rate, contract rate. In the "O. T." section is the time and a half of the base rate, hourly rate extension.

Q. Is that rate secured as was the overtime rate in the previous payroll period from charts, Exhibit "C"? A. It is the same figure, yes.

Q. Will you explain the entries that appear in the column entitled "Extensions"? [24]

A. Yes. The "R T" section is the result of multiplying the basic hourly rate by the number of regular hours worked. In the "O T" section, overtime section, we have a result that is obtained by multiplying the overtime rate by the number of overtime hours worked.

Q. In the column headed "Total"?

A. The total of the overtime and the regular time is extended.

(Testimony of Harry R. Miles.)

Q. What figure is placed in the column entitled "Guaranteed Weekly Rate"?

A. That represents the guaranteed weekly rate guaranteed by the contract.

Q. In preparing the first bi-weekly payroll form, how would the employee, making that preparation, know what rates to insert in that column for employee Max R. Hopley, for example, that appears on line 2?

A. I don't follow what you are driving at. Do you mean how would you arrive at the guaranteed weekly rate?

Q. Yes. How is that rate secured? Where does the person who makes up this payroll go to get that rate?

A. Well, from the payroll records. In other words,——

Q. From the preceding payroll records?

A. No, not necessarily.

Q. We would have to go to our records which would show his monthly equivalent, as the preceding payroll would show his monthly equivalent. [25]

Q. Does that, too, come from the chart, Exhibit 1-C? A. Yes.

Q. Knowing his monthly equivalent from the preceding payroll form, you secure the weekly rate from the chart? A. That is right.

Q. And that figure goes in the column entitled "Guaranteed Weekly Rate"; is that correct?

A. That is right.

Q. What entries are made in the column entitled

(Testimony of Harry R. Miles.)

"Additional Compensation Per Guarantee"? And here you might refer to the same employee, Mr. Hopley.

A. That sum that you find there, $20.37, represents the difference between his guaranteed weekly rate and the computation of hours actually worked, hours straight time and overtime; hours actually worked.

Q. In other words, the figure entered in the column headed, "Total" is subtracted from the figure in the column entitled "Guaranteed Weekly Rate"?

A. Yes, if the guaranteed weekly rate figure is greater than that appearing in the total column.

Q. And the entry in the next column entitled "Weekly Earnings"?

A. Represents the greater figure, either the figure appearing in the "Total" column or the figure appearing in the "Guaranteed Weekly Rate" column.

Q. Let me understand that. Would the entries in the [26] column entitled "Total" ever be more than the entries in the column entitled "Guaranteed Weekly Rates"? A. Yes, sir.

Q. Under what circumstances?

A. If the computation of his hours worked, that is, the regular time and overtime, based on his basic hourly rate. In other words, if he were to work a sufficient number of hours, that would accumulate earnings greater than his guaranteed weekly rate, he would have a greater amount in the "Total" column.

(Testimony of Harry R. Miles.)

Q. You might explain that in terms of the employee Smith that appears on line 4.

A. That is right. This man has worked 75 over time hours, which is extended out to the $42.75. To that we would have added his regular time earnings at $15.20. That gives him a total of $57.95, whereas he has only been guaranteed $40.38, according to the contract.

Q. What figure is entered in the column entitled "Amount"?

A. The amount would be the greater of the two; in this case the amount appearing in the "Total" column.

Q. Will you look at the entries for the employee John H. Jones, appearing on line 3, and will you explain how computations were made for his earnings in that payroll period?

A. During the first week, work week, this man worked [27] 42 hours. His time is extended out 40 hours regular time and 22 hours overtime, which gave him——

Q. Excuse me. May I correct you? I believe you said 42 hours.

A. I mean to say 40 hours regular time and 22 hours overtime.

Q. I see.

A. Which makes an extension of $43.51 actually due him, if he were paid by his hourly rate. But since his guaranteed weekly rate is $63.46, that amount is brought forward over into the weekly earnings column for that week. And in the second

(Testimony of Harry R. Miles.)

work week he worked two days, and there was a voluntary layoff of five days, so that the amount of wages due him for the second work week would be 2/7ths of his guaranteed weekly rate.

Q. What figure is entered in the column entitled "Guaranteed Weekly Rate"? It would be 2/7ths his guaranteed weekly rate? A. Yes.

Q. Was this method of calculation, which you have just described used in every case in which an employee was paid on a daily basis, rather than on the basis of a full week's guarantee, under the new payroll?

A. Under the new payroll system it was, yes.

Mr. Bertram: You may cross examine, Mr. Sandmeyer.

Mr. Sandmeyer: I have no question. [28]

The Court: Have you signed one of these contracts?

What is the exhibit number, Mr. Cross?

The Clerk: I have an employer's contract in blank, your Honor, which is 1-B. I don't know whether that is the one you referred to.

The Court: Have you signed a contract?

The Witness: No, I am not working under that. I am on an exempt payroll.

The Court: Is the other witness working under that, that testified, Mr. Lacy?

The Witness: No; he is also on an exempt payroll.

(Witness excused.)

Miss Williams: I will call Miss Bertha Morse.

BERTHA MORSE,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Bertha Morse.

The Clerk: Take the stand, please.

By Miss Williams:

Q. Your name is Bertha Morse?

A. That is right.

Q. And your address?

A. 444 Rosecrans Avenue, Manhattan Beach. [29]

Q. What is your occupation, Miss Morse?

A. I am an inspector for the United States Department of Labor, Wage and Hour Division.

Mr. Sandmeyer: I can hardly hear the witness.

Q. By Miss Williams: You testified you are an inspector for the Wage and Hour Division of the United States Department of Labor; did you not?

A. That is right.

Q. Miss Morse, how long have you been an inspector with the Wage and Hour Division?

A. One year and a half.

Q. In the discharge of your official duties, Miss Morse, did you have occasion to examine the payroll records of the defendant for the employees involved in this suit for the period July 1, 1942, to March 11, 1944?

A. I did.

Q. Over what approximate period of time did you make the examination?

(Testimony of Bertha Morse.)

A. I worked on the records and the examination intermittently from October, 1943.

Q. Until the present time, you mean?

A. That is right.

Miss Williams: Mr. Clark, I am going to ask you to mark this schedule entitled "Pay Roll Periods in Which Guarantee was Paid for Workweeks in which No Overtime was Worked" for identification as our next exhibit. I think it is No. 3. [30]

The Clerk: Plaintiff's Exhibit No. 3 for identification.

(The document referred to was marked as Plaintiff's Exhibit 3, for identification.)

Q. By Miss Williams: I hand you Plaintiff's Exhibit No. 3 for identification, Miss Morse, and ask if you prepared it?

A. Yes, I did. I didn't type it, but I prepared the original from which this was typed.

Miss Williams: May I hand the Court a copy for his examination, if he cares to see it?

Q. By Miss Williams: From what source did you prepare that schedule, Miss Morse?

A. From the defendant's payroll records that you previously referred to.

Q. The payroll records which are Plaintiff's Exhibit No. 2 in evidence. What does the first column mean, entitled "Payroll Period"; what does that show?

A. That shows the payroll from which the information was derived.

(Testimony of Bertha Morse.)

Q. And in the next column, "Name and Occupation", was that entry taken exactly from the defendant's records?

A. Yes, except for abbreviations.

Q. In other words, you may have used initials instead of the full first name?

A. That is right.

Q. The entries in the next column, "Hours Previously [31] Paid For", from what source on the defendant's records did you obtain that information?

A. That was taken exactly from the payroll records, except that the heading of the column, the title of the column was changed somewhat. The figures are exactly from the records.

Q. Was the heading on the defendant's record "Week Hours Paid"?

A. Yes, that is right.

Miss Williams: In other words, for the information of the Court, in our Exhibit 1-H in evidence, which is a sample of the defendant's payroll record, this information was in the column "Week Hours Paid".

Q. My Miss Williams: But the entries in the column which you have entitled "Hours Previously Paid For", those entries were taken directly from the defendant's records?

A. Yes, there is no change in those.

Q. Now, the entries in the columns headed "S. M. T.", and so forth, Sunday, Monday, Tuesday and other words, are those entries correct copies from the defendant's records?

(Testimony of Bertha Morse.)

A. Exactly, yes.

Q. And the total hours worked in the week——

A. No, that column, as such, was not on the payroll records. I got that figure from adding what I call hours previously paid for or week hours paid and the total for the other column that was in the payroll records that represented, [32] in some cases, a partial week.

Q. I am going to hand you Plaintiff's Exhibit 1-H and ask you to identify the two columns on the defendant's payroll from which you took the figures you added as a total, in that column.

A. From the column headed, "Week Hours Paid", and "Total Hours Worked".

Q. In other words, you added together the figures in those two columns on defendant's payroll and put the total in the——

A. The column here headed "Total In Week".

Q. Now, the entries in the column "Hours Over 84", where did you get that entry; what column on the defendant's payrolls?

A. I think that column on the payrolls was called "Overtime Worked". The figures were taken exactly, without variation, from that column; the heading was changed.

Q. And the entries in the column which you have entitled "Pay For Hours Over 84"?

A. They were taken from a column called, I believe, "Overtime Pay". The figures in that are unchanged.

(Testimony of Bertha Morse.)

Q. The column called "Overtime Pay" on defendant's records? A. That is right.

Q. And the entries in the columns which you have entitled "Rates, Extensions" and "Total Pay", were they [33] copied exactly from defendant's records?

A. Yes, except the column 1 headed "Total Pay", I believe, was called "Amount". The figures in it are exactly the same.

Q. Now, Miss Morse, this chart which you have, Plaintiff's Exhibit 3 for identification, does not include all the weeks for all the employees shown on defendant's payroll, Exhibit 2 in evidence?

A. No, it does not.

Q. On what basis was the selection made of the weeks included in Plaintiff's Exhibit 3 for identification?

A. I selected those weeks in which forty hours or less were worked. For those weeks I included the entire payroll period. That is, the other weeks that fell in the payroll period in which the week I was choosing same. It works out, however, some weeks consisted of vacations or sickness and didn't possibly include those where less than forty hours were worked.

Q. What period is covered by that chart, Plaintiff's Exhibit 3 for identification?

A. The period during which the——

Q. Just give us the dates, if you can. Do you remember the dates?

A. From July 1, 1942 through January 15, 1944.

(Testimony of Bertha Morse.)

Miss Williams: I offer this exhibit in evidence as Plaintiff's Exhibit 3. [34-35]

The Court: Yes.

(The document referred to was marked as Plaintiff's Exhibit No. 3, for identification.)

Mr. Sandmeyer: May I interrogate the witness on voir dire at this time?

The Court: Yes.

Mr. Sandmeyer: You have seen copies of this (indicating)?

Miss Williams: Yes. Was that received.

Mr. Sandmeyer: No, I want to examine her first.

Miss Williams: Yes, I thought so.

Voir Dire Examination

By Mr. Sandmeyer:

Q. Miss Morse, as I understand the testimony this Plaintiff's Exhibit 3 for identification contains the work weeks in the period you mentioned in which the employee worked forty hours or less in a work week? A. Yes, that is right.

Q. You put down the entire pay period which might contain a work week of hours in excess of forty? A. That is right.

Q. You would take the entire payroll period if one work week therein contained less than forty hours or exactly forty hours?

A. That is correct.

Q. In these work weeks in which the employee worked [36] forty hours or less, the figures contained in the last column to the right, namely,

(Testimony of Bertha Morse.)

"Total Pay" is the amount that was paid for that particular pay roll period at the rate of the weekly guarantee, plus time and-a-half for all hours over eighty-four, is that correct?

Miss Williams: Just a minute. I would like to object to that question. The witness has testified she took that entry from the defendant's pay roll records. Now, what the defendant intended and how the computation was made the defendant's employee has just testified concerning.

Mr. Sandmeyer: Well, I am trying to find out if she knows. I am asking that preliminarily. She spent many days on our records. I am just trying to find out what this schedule shows. It's materiality.

Miss Williams: We offered it. It's materiality, I think, is in the offer. We have offered it to show the weeks in which the employees worked less than forty hours.

The Court: Counsel can certainly show how she arrived at these figures. How she prepared it.

Miss Williams: She just testified she copied it from the defendant's payroll. She didn't compute these figures. He is asking her what they meant on the defendant's pay roll. I feel that calls for her conclusion. How the computation was made has just been testified to by the defendant's employee.

[37]

The Court: She has testified for quite some time, and given her conclusion as to what all those items were.

(Testimony of Bertha Morse.)

Miss Williams: I suggest it wasn't her conclusion. These figures are all transcribed exactly from the defendant's records. In some instances she has *chanted* the columnary headings. And in each instance I asked if she changed the columnar headings and from column on defendant's payroll she got the figures. She has not changed the figures or made any computations of her own.

The Court: I understand that. I think that ought to be shown, of course. Proceed.

Repeat the last question.

(The question was read.)

The Witness: That is correct.

Mr. Sandmeyer: This schedule, Plaintiff's Exhibit 3, for identifiaction, purports to show nothing more than to itemize the payroll periods in which the guarantee contained in the written contract was paid for work weeks in which forty hours or less were worked in one of the weeks in the payroll period; is that right?

The Witness: Yes.

Mr. Sandmeyer: Now, your Honor, we object to this offer upon the ground it is immaterial. To point that out, as has been conceded in writing and by statement of counel, the terms of this agreement are substantially the same as the contracts which the United States Supreme Court approved in the Belo case. [38]

In that contract, as in this, there was a weekly guarantee, that is, guaranteeing the employee that he would be paid or receive so much for each week

(Testimony of Bertha Morse.)

he worked, irrespective, that is, a minimum, irrespective of the hours worked.

Now, all of this schedule, Plaintiff's' Exhibit 3 for identification, all it could possibly show is that the defendant lived up to its contract. Now, if the contract is valid, the performance of a contract certainly cannot be a violation of the Act. The Supreme Court held that this contract, that is, one on identical terms of the one here, is not violative of the Fair Labor Standards Act. And if the parties made such a contract which the Supreme Court says complies with the requirements of the Fair Labor Standards Act, how could living up to that contract be a violation? Therefore, it is immaterial.

The Court: Well, counsel is proper in making an objection in order to preserve the record, and also in line with his theory that the contract here is the same as in the Belo case decided by the Supreme Court. I want to hear all the evidence. I will permit the plaintiff to proceed and allow the defendant an exception.

Mr. Sandmeyer: My theory is not the same as the Belo case, but it is considered by plaintiff's counsel as substantially the same.

The Court: We will hear the testimony.

Miss Williams: Do I understand that Plaintiff's Exhibit 3 is received in evidence? [39]

The Clerk: May I mark that?

(The document referred to was marked as Plaintiff's Exhibit 3, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 3

SCHEDULE I

PAYROLL PERIODS IN WHICH GUARANTEE WAS PAID FOR WORKWEEKS IN WHICH NO OVERTIME WAS WORKED

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
July 1-15 1942	Alexander, H. L.		11	1	0	5	0	6	5	28	0		215.00	107.50	
	Cementer		10	9	0	3				22	0				
	Barnett, J. E.	0				12½	0	4	7	23½	0				
	Well-logging Driver		4	6	4½	3	6	18	21	62½	0				
			21	10	3	0				34	0		150.00	75.00	
	Boggs, J. N.	10				18	14	12	12	66	0				
	Cement Driver		0	10	7	4	4	6	8	39	0				
			12	14	4	0				30	0		165.00	82.50	
	Earl, A. W.	44				8	12	10	16	90	6	3.00			
	Cement Driver		13	3	17	4	DO	DO	V	37	0			3.00	
			V	V	V	V				0	0		165.00	82.50	85.50
	Ferre, S. D.	14½				14½	5	4	0	38	0				
	Bulk-cement Driver		0	4	4	9	4	0	7	28	0				
			2	4	6	4				16	0		165.00	82.50	
	Ferre, Val	12				16	4	12	3	47	0				
	Cement Driver		17	8	0	7	0	DO	DO	32	0				
			6	13	0	4				23	0		165.00	82.50	
	Godwin, R. A.		0	6	4	4	4	4	4	26	0				
	Cementer		8	4	0	8				20	0		250.00	125.00	
	Roe, T. O.	6				19	0	0	0	25	0				
	Cement Driver		0	1	0	10	0	2	DO	13	0				
			DO	0	2½	2				4½	0		165.00	82.50	
	Thomas, E. T.	4				8	4	4	0	20	0				
	Cement Driver		0	6	4	4	4	4	4	26	0				
			0	4	4	8				16	0		165.00	82.50	
	Thomas, H. L.	10				18½	14½	4	7	54	0				
	Bulk-cement Driver		18	4½	DO	0	0	8	8	38½	0				
			8	8	0	0				16	0		150.00	75.00	
	Trott, E. C.		17	0	6	0	0	0	8	31	0				
	Tester		0	0	4	8				12	0		225.00	112.50	
	Vaughn, F. E.	13				8	12	13	6	52	0				
	Bulk-cement Driver		12	5	2	4	0	5	7	35	0				
			9	7	11	5				32	0		150.00	75.00	
	Wagner, E. W.		3½	0	0	0	8	0	8	19½	0				
	Cementer		8	8	8	8				32	0		250.00	125.00	
	Weaver, F. L.		0	8	4	10	4	4	4	34	0				
	Cementer		0	5½	3½	5				14	0		250.00	125.00	
July 16-31 1942	Barnett, J. E.	34					11	21	17	83	0				
	Well-logging Driver		0	0	7	21½	9	0	0	37½	0				
			0	14	4½	5	4	0		27½	0		150.00	75.00	

		0	14	4½	5	4	0		27½	0	150.00	75.00
Brazeal, Wm. T.	11					3½	0	16	30½	0		
Bulk-cement Driver		4	4	3	6	8	0	4	29	0		
		14	8½	7	11	24	12½		77	0	137.80	68.90
Ferre, S. D.	16					2	5	9	32	0		
Bulk-cement Driver		3	9	9	4	0	4	4	33	0		
		0	5	21	9	4	0		39	0	165.00	82.50
Fry, B. C.	24½					6½	8	14	53	0		
Cementer		0	6	15½	17½	DO	DO	0	39	0		
		0	8½	4	7½	5½	13		38½	0	250.00	125.00
Henderson, C.	16					7	7	7	37	0		
Cementer		0	7	8	7	7	8	8	45	0		
		8	24	24	7	17	8		88	4	237.50	118.75
Perkins, R. W.	18					3	3	12½	36½	0		
Cementer		4	14½	1	6	3	0	3	31½	0		
		0	6	11	4	4	4		29	0	250.00	125.00
Peterson, R. S.	38					22	16	5	81	0		
Tester		0	7	7	0	12	8	5½	39½	0		
		8	9½	13½	9½	8	8		56½	0	210.00	105.00
Pierce, Herbert	28					DO	DO	DO	23	0		
Cement Driver		0	8	7	9	14	6	10	54	0		
		12½	8	0	0	V	V		20½	0	165.00	82.50
Roe, T. O.	4½					6	4	9	23½	0		
Cement Driver		3½	14½	1	DO	0	0	0	19	0		
		0	2	15½	4½	5½	14		41½	0	165.00	82.50
Roth, R. H.	0					4	13	4	21	0		
Cementer		0	4	4	4	3	4	4	23	0		
		13	7	8	8	21	12		69	0	250.00	125.00
Sutherland, L. C.	21					8	0	0	29	0		
Echometer Operator		DO	6½	9½	4	0	0	0	20	0		
		DO	15	11	12	15½	10½		64	0	185.00	92.50
Thomas, E. T.	16					11	5	0	32	0		
Cement Driver		0	11	9½	4	4	8	0	36½	0		
		0	7	15	8	8	4		42	0	165.00	82.50
Trott, E. C.	12					6	0	0	18	0		
Tester		0	8	0	5	0	0	0	13	0		
		0	0	0	0	0	0		0	0	225.00	112.50
Weaver, F. L.	14					6	4	10	34	0		
Cementer		7	6	4	4	3½	8	2	34½	0		
		0	3	15	8	8	4		38	0	250.00	125.00
Wininger, G. E.	21					5½	8	10	44½	0		
Cement Driver		0	4	6	8	8	7	7	40	0		
		4	10	12	8	4	9½		47½	0	165.00	82.50

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Aug. 1-15 1942	Alexander, H. L.	69							5	74	0				
	Cementer		3	0	0	6	0	0	8	17	0				
			11	11	4	6	14	0	0	46	0		215.00	107.50	
	Barnett, J. E.	27½							0	27½	0				
	Well-logging Driver		22	4	7	9	0	0	0	42	0				
			0	0	0	0	6	4	0	10	0		165.00	82.50	
	Boggs, J. N.	24½							14	38½	0				
	Cement Driver		12	8	0	10	0	17	16	63	0				
			16½	7	15½	11	22	7	16	95	11		175.00	87.50	
	Beck, T. C.	67½							12	79½	0				
	Cementer		12	8	12	14	18	6	8	78	0				
			0	0	5	13	0	7	13½	38½	0		225.00	112.50	
	Perkins, R. W.	29							12	41	0				
	Cementer		21	4	3	4½	11	6	0	49½	0				
			3	16	8	0	0	7	6	40	0		250.00	125.00	
	Roe, T. O.	41½							11	52½	0				
	Cement Driver		21	7	10	5	6	5½	0	54½	0				
			0	3	0	4½	14	11	0	32½	0		175.00	87.50	
	Trott, E. C.	0							0	0	0				
	Tester		0	0	0	0	0	8	8	16	0				
			8	8	0	0	0	0	0	16	0		225.00	112.50	
	Tinker, O. A.	0							15	15	0				
	Tester		2	10	14	16	14	6	19	81	0				
			DO	15	8	10	11	10	9	63	0		235.00	117.50	
	Weaver, F. L.	38							15	53	0				
	Cementer		12	7	7	6	8	4	3	47	0				
			0	3½	8	5½	9	9	0	35	0		250.00	125.00	
	Wendorff, R. A.	59							12	71	0				
	Cementer		12	8	12	14	18	8	8	80	0				
			0	0	3	7	5	9	6	30	0		250.00	125.00	
Aug. 16-31 1942	Alexander, H. L.	0	10½	11	0	13½	0	0	0	35	0				
	Cementer		12	0	0	9	0	0	0	21	0			.00	
			0	0						0	0		215.00	107.50	107.50
	Barker, F. L.	0	0	6½	6½	12	6	9	DQ	40	0				
	Cementer		DO	10½	0	6	12	22	10	60½	0			.00	
			0	12						12	0		250.00	125.00	125.00
	Barnett, J. E.	0	7	DO	7	7	7	7	0	35	0				
	Well-logging Driver		DO	V	V	V	V	V	V	0	0			.00	
			V	V						0	0		165.00	82.50	82.50
	Brazeal, W. T.	0	11	8	DO	4	4	8	14	49	0				
	Bulk-cement Driver		9	7	DO	0	0	7	6	29	0			.00	

		V	V						0	0		165.00	82.50	82.50
Brazeal, W. T.	0	11	8	DO	4	4	8	14	49	0				
Bulk-cement Driver		9	7	DO	0	0	7	6	29	0			.00	
		8½	6						14½	0		150.00	75.00	75.00
Cross, C. R.	0	V	V	V	0	0	8	8	16	0				
Tester		8	8	8	8	8	8	8	56	0			.00	
		8	8						16	0		240.00	120.00	120.00
Doane, H. E.	0	16	11	12	11	8	7	0	65	0				
Cement Driver		0	0	0	8	6	19	4	37	0			.00	
		0	8							0		190.00	95.00	95.00
Ferre, S. D.	0	0	0	0	0	15	8	4	27	0				
Bulk-cement Driver		5	9	4	7	14	8	8	55	0			.00	
		0	0						0	0		175.00	87.50	87.50
Ferre, Val	0	9	17	8	14	15	14	8	85	1	.57			
Cement Driver		4	4	DO	DO	4	14	4	30	0			.57	
		4	6						10	0		175.00	87.50	88.07
Godwin, R. A.	0	10	8	7	4	0	0	0	29	0				
Cementer		0	7	7	7½	17	4	9	51½	0			.00	
		0	7						7	0		250.00	125.00	125.00
Henderson, C.	0	16	19	5	7	13	7	7	74	0				
Cementer		0	7	7	7	8	7	0	36	0			.00	
		0	0						0	0		237.50	118.75	117.75
James, D. S.	0	0	7	4	9½	10	0	8	38½	0				
Cement Driver		4	11	7	0	7	4	0	33	0			.00	
		0	0					0	0			175.00	87.50	87.50
Preston, T. J.	0	8	14	5	6	12	5	4	54	0				
Cementer		0	2	0	0	0	0	4	6	0			.00	
		0	6						6	0		250.00	125.00	125.00
Roe, T. O.	0	0	7½	0	0	10½	5	0	23	0				
Cement Driver		DO	DO	DO	6	7	13	0	26	0			.00	
		0	0						0	0		175.00	87.50	87.50
Roth, R. H.	0	V	V	0	0	0	0	7	7	0				
Cementer		0	6	5	8	5	19	0	43	0			.00	
		0	0						0	0		250.00	125.00	125.00
Weaver, F. L.	0	0	7	7½	8	5	6	0	33½	0				
Cementer		0	9	6½	6	6	6	8½	42	0			.00	
		0	6						6	0		250.00	125.00	125.00

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Aug. 16-31 1942	Wendorff, R. A.	0	0	7	4	9	10	0	8	38	0				
	Cementer		4	11	7	8	7	4	0	41	0			.00	
			0	0						0	0		250.00	125.00	125.00
	Wilson, C. L.	0	12½	13	4	13½	4½	8½	23	79	0				
	Cementer Driver		12	0	4½	0	3½	0	13	33	0			.00	
			9½	9						18½	0		165.00	82.50	82.50
Sept. 1-15 1942	Alexander, H. L.	0			0	0	18	20½	0	38½	0				
	Cementer		0	7	8	5	0	0	0	20	0			.00	
			0	13	0					13	0		215.00	107.50	107.50
	Barker, F. A.	12			8	11	2½	0	S	33½	0				
	Cementer		S	S	S	S	S	S	S	0	0			.00	
			S	S	S					0	0		250.00	125.00	125.00
	Boggs, J. N.	0			11	16	DO	DO	7	24	0				
	Cement Driver		4	5	7	0	10	7	5	38	0			.00	
			0	16	4					20	0		175.00	87.50	87.50
	Ferre, S. D.	0			19	5	8	4	6	42	0				
	Bulk-cement Driver		2	6	6	4	9	0	4	31	0			.00	
			0	7	7					14	0		175.00	87.50	87.50
	Ferre, Val	10			8	7	8	6	7	46	0				
	Cement Driver		6	7	6	0	DO	7	4	30	0			.00	
			3	7	8					18	0		190.00	95.00	95.00
	Henderson, C.	0			0	7	12	7	7	33	0				
	Cementer		14	24	3	0	7	0	5	53	0			.00	
			8	8	8					24	0		237.50	118.75	118.75
	James, D. S.	0			0	8	4	0	0	12	0				
	Cement Driver		0	5	0	11	0	0	8	24	0			.00	
			2	9	9					20	0		175.00	87.50	87.50
	Kelsey, R. R.	9½			15½	7½	13	10	8	63½	0				
	Cementer		0	0	DO	DO	12	7	7	26	0			.00	
			0	7	7					14	0		250.00	125.00	125.00
	McCommon, J. C.	10			9½	8	8	10	7	52½	0				
	Mechanic		DO	DO	8½	8½	8	8	4½	37½	0			.00	
			DO	8	8					16	0		215.00	107.50	107.50
	Perkins, R. W.	14			0	0	10	7	7	38	0				
	Cementer		7	7	7	13	7	6	4	51	0			.00	

			0	6	6					12	0	250.00	125.00	125.00
	Preston, T. J.	6			5	5	5	6	0	27	0			
	Cementer		10	12	0	0	4	5	6	37	0		.00	
			4	8	8					20	0	250.00	125.00	125.00
	Reynolds, J. K.	7			9	2	0	0	20	38	0			
	Well-logging Operator		20	12½	13½	7	7	8	8	76	0		.00	
			8	6	6					20	0	240.00	120.00	120.00
	Roth, R. H.	0			8	4	4	0	0	16	0			
	Cementer		10	15	7	6	5	8	15	66	0		.00	
			5½	8	8					21½	0	250.00	125.00	125.00
	Smith, R. S.	15			7	7	19	7½	7	62½	0			
	Halliburton-Yowell Operator		0	3	7	8	8	7	4	37	0		.00	
			0	9	8½					17½	0	235.00	117.50	117.50
	Trott, E. C.	16			8	0	8	8	8	48	0			
	Tester		0	8	0	8	8	8	8	40	0		.00	
			0	8	8					16	0	240.00	120.00	120.00
	Weaver, F. L.	6			6	5	5	11	5	38	0			
	Cementer		4	5	6	4	0	6	4	29	0		.00	
			0	10½	6					16½	0	250.00	125.00	125.00
	Wendorff, R. A.	0			0	8	4	0	0	12	0			
	Cementer		0	5	0	16	20	10	9	60	0		.00	
			0	4	6					10	0	250.00	125.00	125.00
	Winiger, G. E.	12			8	11	9	10	6	56	0			
	Cement Driver		4	DO	DO	6	6	0	0	16	0		.00	
			0	15	5					20	0	175.00	87.50	87.50
Sept. 16-30 1942	Alexander, H. L.	13				0	12	0	16	41	0			
	Cementer		DO	DO	0	6½	12	14	0	32½	0		.00	
			0	0	0	0				0	0	215.00	107.50	107.50
	Boggs, J. N.	20				DO	DO	8	8	36	0			
	Cement Driver		15	4	7	11	11½	3	0	51½	0		.00	
			7	7	6	12				32	0	175.00	87.50	87.50

* Apparently clerical error.

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Sept. 16-30 1942	Borden, L. L.	0				4	6	0	0	10	0				
	Cement Driver		4½	4½	0	7	0	3	9	28	0			.00	
			2	17	9½	13				41½	0		150.00	75.00	75.00
	Brazeal, W. T.	0				4	5	11	8½	28½	0				
	Bulk-cemnt Driver		8	12	0	7	12	6	0	45	0			.00	
			0	7	11½	2				20½	0		165.00	82.50	82.50
	Ferre, S. D.	14				6	7	6	0	33	0				
	Bulk-cement Driver		0	7½	4	4	DO	6	6	27½	0			.00	
			0	10	14	13				37	0		175.00	87.50	87.50
	Ferre, Val	18				9	7	9	6	31	0				
	Cement Driver		4	6	6	6	6	7½	DO	35½	0			.00	
			6	12	13	14				45	0		190.00	95.00	95.00
	Godwin, R. A.	14				7	5	7	4	37	0				
	Cementer		0	8	7	9	5	7	7	43	0			.00	
			7	7	7	7				28	0		250.00	125.00	125.00
	Herrick, S. F.	27				14½	10	12	10½	74	0				
	Cementer		4	9	DO	DO	0	7½	13½	34	0			.00	
			4	14	15	11½				42½	0		250.00	125.00	125.00
	Kelsey, R. R.	14				DO	DO	7½	7	28½	0				
	Cementer		17	13	7	8	8½	8	8½	70	0			.00	
			5½	5	8	17				35½	0		250.00	125.00	125.00
	Knott, L. A.	21				4	6	7½	3	41½	0				
	Cement Driver		7	16	9½	0	0	0	0	32½	40			.00	
			0	0	0	0				0	0		150.00	75.00	75.00
	Perkins, R. W.	12				7	7	7	4	37	0				
	Cementer		12½	4	5	7	7	7	6	48½	0			.00	
			0	13	4½	7				24½	0		250.00	125.00	125.00
	Preston, T. J.	20				5	4	0	0	29	0				
	Cementer		0	8	13	7½	4	13½	8	54	0			.00	
			0	9½	6	13				28½	0		250.00	125.00	125.00
	Roe, T. O.	27				8½	5	6	16	62½	0				
	Tester		8	0	0	4	13½	7	DO	32½	0			.00	
			0	8	6	6				20	0		195.00	97.50	97.50
	Sutherland, L. C.	16				8	8	8	4	42	0				
	Echometer Operator		0	8	8	8	8	8	0	40	0			.00	

	X		0	8	8	8				24	0		185.00	92.50	92.50
	Thomas, E. T.	14				7	7	4	4	36	0				
	Cement Driver		0	8	7	7	5	7	0	34	0			.00	
			0	7	7	7				21	0		175.00	87.50	87.50
	Vaughn, F. E.	16				8	8	18	6	56	0				
	Bulk-cement Driver		DO	DO	0	10	12	0	2	24	0			.00	
			4	11	8	10				33	0		165.00	82.50	82.50
	Wagner, E. W.	24				4	0	0	0	28	0				
	Cementer		0	4	4	0	8	6	DO	22	0			.00	
			0	5½	20	8				33½	0		250.00	125.00	125.00
	Weaver, F. L.	16½				6	5	5	5	37½	0				
	Cementer		0	5	6	6	6	0	4	27	0			.00	
			0	6	5	6				17	0		250.00	125.00	125.00
	Wilson, C. L.	13				8	12	13	9	55	0				
	Cement Driver		0	9	10	5	6	DO	DO	30	0			.00	
			DO	12½	19	10				41½	0		165.00	82.50	82.50
Oct. 1-15 1942	Barnett, J. E.	16					8	8	8	40	0				
	Well-logging Driver		8	0	8	8	8	8	8	48	0			.00	
			0	8	8	8	8			32	0		165.00	82.50	82.50
	Brobst, B. H.	15					0	14	8	37	0				
	Cementer		2	8	11	7½	10	12	2	52½	0			.00	
			3	3½	16½	11	6			40	0		250.00	125.00	125.00
	Fry, B. C.	60					7½	13	10½	91	7	5.74			
	Cementer		2½	8	8	11½	6	DO	DO	36	0			5.74	
			0	8	10½	12	8½			39	0		250.00	125.00	130.74
	Reynolds, J. K.	21					7	7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	7	42	0			.00	
			DO	7	7	7	7			28	0		240.00	120.00	120.00
	Roe, T. O.	20					0	0	18	38	0				
	Tester		11	10½	0	15	22	7	3	68½	0			.00	
			0	23	19	0	DO			42	0		195.00	97.50	97.50

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked (Continued).

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Oct. 1-15 1942	Roth, R. H. Cementer	15					9	8	4	36	0				
			0	5	5	6	15	16	8	55	0			.00	
			0	6	12	16	6			40	0		250.00	125.00	125.00
	Weaver, F. L. Cementer	17					11	10	17	55	0				
			0	9	5	4	6	6	7	37	0			.00	
			0	5	5	6	4			20	0		250.00	125.00	125.00
Oct. 16-31 1942	Alexander, H. L. Cementer	10						6	18	34	0				
			11	13	16	0	8	0	0	48	0			.00	
			0	0	0	0	0	0	0	0	0		215.00	107.50	107.50
	Alter, J. N. Tester	20						10	10	40	0				
			16	18	16	9	10	12	9	90	6	4.50		4.50	
			0	13	8	8	10	7	8	54	0		230.00	115.00	119.50
	Boggs, J. N. Cement Driver	16						11	6	33	0				
			14	15	16	0	DO	DO	16½	51½	0			.00	
			7	15	8	6	7	7	DO	50	0		175.00	87.50	87.50
	Borden, L. L. Bulk-cement Driver	24½						0	0	24½	0				
			6½	17½	11½	4	6½	7	5½	58½	0			.00	
			5	6	6	8	13	10½	5½	54	0		150.00	75.00	75.00
	Godwin, R. A. Cementer	44						16	7	67	0				
			0	13	7	7	12	8	7	54	0			.00	
			0	7	7	7	7	7	0	35	0		250.00	125.00	125.00
	Kelsey, R. R. Cementer	16						11	7	34	0				
			3	17	17	7	DO	DO	11	55	0			.00	
			0	13	9	5	7	7	0	41	0		250.00	125.00	125.00
	Perkins, R. W. Cementer	22						13	9½	44½	0				
			0	10½	12	21½	15½	7	4	70½	0			.00	
			9½	3	DO	DO	6	8	13	39½	0		250.00	125.00	125.00
	Preston, T. J. Cementer	30						12	4	46	0				
			0	14	0	0	0	9½	5	28½	0			.00	
			0	7	8	4	6	7	4	36	0		250.00	125.00	125.00
	Roth, R. H. Cementer	40						16	9	65	0				
			23	16	5	16	15	18	17	110	26	21.32		21.32	
			16	4	0	0	0	0	0	20	0		250.00	125.00	146.32

			16	4	0	0	0	0	0	20	0	250.00	125.00	146.32
	Sutherland, L. C.	32						8	0	40	0			
	Echometer Operator		DO	8	8	8	8	8	8	48	0		.00	
			DO	8	12	11	11	11	11	64	0	185.00	92.50	92.50
	Thomas, E. T.	44						15	6	65	0			
	Cement Driver		0	7½	7	7	11	9	6	47½	0		.00	
			0	7	0	7	8	8	7	37	0	175.00	87.50	87.50
	Wagner, E. W.	12						18	16	46	0			
	Cementer		9½	0	0	8½	10	3	6	37	0		.00	
			4	0	0	0	0	0	0	4	0	250.00	125.00	125.00
	Ward, Jimmie	21½						6½	11½	39½	0			
	Bulk-cement Driver		2½	13	8½	11	5	16½	6	62½	0		.00	
			4	10½	4½	3	7½	5	10	44½	0	150.00	75.00	75.00
	Weaver, F. L.	20						7	6	33	0			
	Cementer		0	12	6	8	10	9	0	45	0		.00	
			0	5	6	6	6	6	7	36	0	250.00	125.00	125.00
Nov. 1-15 1942	Alexander, H. L.		0	7	0	DO	DO	9	0	16	0			
	Cementer		4	15	0	8	0	6	0	33	0		.00	
			0							0	0	225.00	112.50	112.50
	Beck, T. C.		6	7	DO	DO	DO	9	13	35	0			
	Cementer		4	20	7	7	9	17½	8	72½	0		.00	
			10							10	0	240.00	120.00	120.00
	Borden, L. L.		4	5½	5	6½	14	6	7½	48½	0			
	Bulk-cement Driver		DO	11	5	3	9	2½	5	35½	0		.00	
			4							4	0	150.00	75.00	75.00
	Boggs, J. N.		DO	0	12	10	8	4	3	37	0			
	Cement Driver		0	4	2	0	4	3	0	13	0		.00	
			0							0		175.00	87.50	87.50
	Davis, R. E.		6	13	6	S	S	8	8	41	0			
	Cement Driver		0	20	8	DO	DO	DO	8	36	0		.00	
			10							10	0	150.00	75.00	75.00
	Ferre, S. D.		0	7	8	DO	8	10	6	39	0			
	Bulk-cement Driver		0	8	7	0	0	7	7	29	0		.00	
			7							7	0	185.00	92.50	92.50

Plaintiff's Exhibit No. 3—(Continued)

Schedule 1.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked (Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Nov. 1-15 1942	Franzen, E. R.		11	8	11½	9	8½	13½	4½	66	0				
	Bulk-cement Driver		8½	0	5½	6	6	DO	DO	26	0			.00	
			0							0	0		165.00	82.50	82.50
	Godwin, R. A.		0	13	6	11	9	9	5½	53½	0				
	Cementer		4	7	12	0	0	0	9	32	0			.00	
			0							0	0		250.00	125.00	125.00
	Henderson, Clifford		11	6	0	9	7	0	0	27	0				
	Cementer		0	0	7	11	10	7	14	49	0			.00	
			4							4	0		250.00	125.00	125.00
	Kelsey, R. R.		DO	DO	15	9	8	8	5	45	0				
	Cementer		0	7	6	4	7	7	7	38	0			.00	
			0							0			250.00	125.00	125.00
	Perkins, R. W.		11	10	10	6	10	4	3½	54½	0				
	Cementer		DO	3	4	4	9	4	4	28	0			.00	
			3							3	0		250.00	125.00	125.00
	Roe, T. O.		0	DO	6½	0	0	6½	3	16	0				
	Tester		7	0	6	0	5	11	5	34	0			.00	
			5							5	0		195.00	97.50	97.50
	Smith, R. S.		11	10	12	15	6	4	4	62	0				
	Halliburton-Yowell		0	8	8	0	7	8	8	39	0			.00	
	Operator		8							8	0		245.00	122.50	122.50
	Vaughn, F. E.		2	11	6	DO	DO	12	3	34	0				
	Bulk-cement Driver		12	14	5	7	4	5	0	47	0			.00	
			0							0	0		175.00	87.50	87.50
	Wagner, E. W.		5	8	7	12½	9	12	8	61½	0				
	Cementer		4	6	0	0	8	8	8	34	0			.00	
			8							8	0		250.00	125.00	125.00
	Weaver, F. L.		0	11½	8	8	8	11	0	46½	0				
	Cementer		0	7	7	7	8	7	0	36	0			.00	
			7							7	0		250.00	125.00	125.00
	Wininger, G. E.		11	10	10	6	10	DO	DO	47	0				
	Cement Driver		0	0	0	0	9	0	0	9	0			.00	

			0							0	0					
Nov. 16-30 1942	Alexander, H. L.	0		0	0	0	DO	DO	0	0	0					
	Cementer		11	13	11	12	0	12	9	68	0					
														.00		
			4	9						13	0		225.00	112.50	112.50	
	Boggs, J. N.	0		DO	DO	3	13	11	10	37	0					
	Cement Driver		12	7	3	8	0	12	15	57	0		.00			
			9	8						17	0		175.00	87.50	87.50	
	Doane, H. E.	4		13	18	16	18	8	4	81	0					
	Tester		0	0	8	8	2	8	9	35	0			.00		
			10	16						26	0		210.00	105.00	105.00	
	Ferre, Val.	0		7	7	8	7	7	DO	36	0					
	Cement Driver		8	9	8	7	0	12	7	51	0			.00		
			DO	7						7	0		190.00	95.00	95.00	
	Godwin, R. A.	0		10	8	7	8	12	4	49	0					
	Cementer		4	7	7	0	0	7	10	35	0			.00		
			10	8						18	0		250.00	125.00	125.00	
	Henderson, Clifford	4		7	23	16	10	22	9	91	7	5.74				
	Cementer		0	9	9	9	0	0	8	35	0			5.74		
			21	14						35	0		250.00	125.00	130.74	
	McCommon, J. C.	0		4	7½	9½	12	8½	6½	48	0					
	Mechanic		DO	8½	9½	8	DO	8	4	38	0			.00		
			DO	8						8	0		230.00	115.00	115.00	
	Perkins, R. W.	3		6	4	8	4	14	12	51	0					
	Cementer		0	0	4	4	0	4	5	17	0			.00		
			3	4						7	0		250.00	125.00	125.00	
	Preston, T. J.	0		0	0	10½	13	18	8	49½	0					
	Cementer		0	9	4	7	0	10	4	34	0			.00		
			15	11						26	0		250.00	125.00	125.00	
	Reynolds, J. K.	0		7	7	7	7	7	7	42	0					
	Well-logging Operator		DO	7	7	7	DO	7	7	35	0			.00		
			DO	7						7	0		240.00	120.00	120.00	
	Roe, T. O.	5		5	8	7	5	5	DO	35	0					
	Tester		0	4	6	0	DO	0	0	10	0			.00		
			10½	0						10½	0		195.00	97.50	97.50	

Plaintiff's Exhibit No. 3—(Continued)

Schedule 1. Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked. (Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S		T	W	T	F	S	Total in Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Nov. 16-30 1942	Sutherland, L. C.	0		8½	10½	10	12	8	0	49	0				
	Echometer Operator		DO	6	8	8	DO	8	4	34	0			.00	
			DO	10						10	0		185.00	92.50	92.50
	Vaughn, F. E.	0		8	6	7	DO	DO	7	28	0				
	Bulk-cement Driver		9	17	8	10	9	9	8	61	0			.00	
			6	9						15	0		175.00	87.50	87.50
	Wagner, E. W.	8		8½	7	11	9	12	4½	60	0				
	Cementer		7	7	15	7	0	0	0	36	0			.00	
			0	0						0	0		250.00	125.00	125.00
	Ward, Jimmie	0		6	4	7½	DO	7½	6	31	0				
	Bulk-cement Driver		12½	7½	12½	18	3	4	DO	57½	0			.00	
			11	11						22	0		150.00	75.00	75.00
	Wininger, G. E.	0		0	0	0	8	13	14	35	0				
	Cement Driver		DO	DO	0	5	0	9	3	17	0			.00	
			9	0						9	0		175.00	87.50	87.50
Dec. 1-15 1942	Boggs, J. N.	17			8	DO	DO	3	0	28	0				
	Cement Driver		5	4	19	12	13	16	12	81	0			.00	
			0	14	15					29	0		175.00	87.50	87.50
	Ferre, Val	7			7	7	7	8	DO	36	0				
	Bulk-cement Driver		7	16	17	7	8	14	14	83	0			.00	
			DO	7	7					14	0		190.00	95.00	95.00
	Kelsey, R. R.	15			10	DO	DO	7	8	40	0				
	Cementer		8	13	19	4	15	15	11	85	1	.82		.82	
			0	8	16					24	0		250.00	125.00	125.82
	Perkins, R. W.	7			4	4	4	0	DO	19	0				
	Cementer		DO	10	14	13	16	18	13½	84½	½	.41		.41	
			DO	10	14					24	0		250.00	125.00	125.41
	Reynolds, J. K.	7			7	7	7	7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7					14	0		240.00	120.00	120.00
	Roe, T. O.	10½			5	0	9	7	5½	37	0				
	Tester		9	0	5	5	DO	3	5	27	0			.00	

			DO	5	5					10	0			195.00	97.50	97.50
	Sutherland, L. C.	10			11	9½	11	6	8½	56	0					
	Echometer Operator		DO	6	7½	7½	7	10	0	38	0				.00	
			10	10	10					30	0			185.00	92.50	92.50
	Wagner, E. W.	0			0	11½	7	14	7	39½	0					
	Cementer		10	10½	15	16	8	16	9	84½	½	.41			.41	
			2	18	13½					33½	0			250.00	125.00	125.41
	Wendorff, R. A.	33½			20½	17	13	9	0	93	9	7.38				
	Cementer		0	0	14	7	4	0	8	33	0				7.38	
			0	13	8					21	0			250.00	125.00	132.38
	Wininger, G. E.	9			0	0	0	0	0	9	0					
	Cement Driver		7	14	13	12	15	17	14	92	8	4.56			4.56	
			9	3	6					18	0			175.00	87.50	92.06
Dec. 16-31	Perkins, R. W.	24				4	4	6	6	44	0					
1942	Cementer		4	4	0	0	7	7	8	30	0				9.84	
			13	22	23	17	21			96	12	9.84		250.00	125.00	134.84
	Reynolds, J. K.	14				7	7	7	4	39	0					
	Well-logging Operator		DO	7	7	7	7	DO	4	32	0				.00	
			DO	7	7	7	7			28	0			240.00	120.00	120.00
	Roe, T. O.	10				6	6	13	7	42	0					
	Tester		3½	8	DO	5	3	0	15	34½	0				.00	
			3	7	10½	3	10			33½	0			195.00	97.50	97.50
	Sutherland, L. C.	30				10	9	8	0	57	0					
	Echometer Operator		DO	10	10	10	10	DO	0	40	0				.00	
			DO	3	7	7	7			24	0			185.00	92.50	92.50
	Tinker, O. A.	16½				9	DO	7	4	36½	0					
	Tester		24	10	7	15	23	7	15	101	17	13.60			35.20	
			24	24	20	19	24			111	27	21.60		245.00	122.50	157.70
	Wininger, G. E.	18				18	5	5	6	52	0					
	Cement Driver		0	5	DO	DO	5	7	9	26	0				6.84	
			13	22	23	17	21			96	12	6.84		175.00	87.50	94.34
Jan. 1-15	Beck, T. C.	46						13	10	69	0					
1943	Cementer		0	9½	DO	DO	DO	16	11	36½	0				.00	
			12	12½	6	11	11	13		65½	0			240.00	120.00	120.00
	Doane, H. E.	36						0	0	36	0					
	Tester		16	12	17	19	13	15	8	100	16	11.04			11.04	
			0	7	7	8	8	16		46	0			210.00	105.00	116.04

Plaintiff's Exhibit No. 3—(Continued)

Schedule I. Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked (Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total in Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Jan. 1-15 1943	Preston, T. J. Cementer	23						0	14	37	0				
			0	6	6	10	7	7	15	51	0			.00	
			3	5	0	0	10	9		27	0		250.00	125.00	125.00
	Sutherland, L. C. Echometer Operator	24						0	0	24	0				
			0	9	8	7	7	7	0	38	0			.00	
			0	7	6	7	8	8		36	0		185.00	92.50	92.50
	Reynolds, J. K. Well-logging Operator	28						DO	7	35	0				
			DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7	7	7		35	0		240.00	120.00	120.00
	Roth, R. H. Cementer	38						0	7	45	0				
			0	0	0	0	0	0	0	0	0			.00	
			0	9½	4	13	5½	5		37	0		250.00	125.00	125.00
	Wilson, C. L. Cement Driver	37½						11	14	62½	0				
			12	8½	DO	DO	DO	4	9	33½	0			.00	
			1½	9½	8	7	7½	2½		36	0		175.00	87.50	87.50
Jan. 16-31 1943	Adams, W. A. Cement Driver	55							9	64	0				
			DO	8	4	6	3	3	17	41	0				
			12	4	7	3	3	6	0	35	0			.00	
			0							0	0		150.00	75.00	75.00
	Allen, F. A. Cement Driver	47							7	54	0				
			6	10	9	8	15	7	11	66	0				
			0	7	7	7	6	0	0	27	0			.00	
			0							0	0		175.00	87.50	87.50
	Barnett, J. E. Well-logging Driver	33							0	33	0				
			0	0	8	7	0	0	0	15	0				
			0	4	7	4	0	0	0	15	0			.00	
			0							0	0		175.00	87.50	87.50
	Ferre, S. D. Bulk-cement Driver	29							6	35	0				
			0	7	DO	7	10	7	9	40	0				
			0	8	13	7	9	7	7	51	0			.00	
			8							8	0		190.00	95.00	95.00
	Godwin, R. A. Cementer	21							7	28	0				
			6	7	7	7	7	10	8	52	0				
			5	11	9	8	9	7	7	56	0			.00	
			8							8	0		250.00	125.00	125.00

			8									8	0				
Hawes, M. T.	41																
Cement Driver			6	5	13	11	0	0	5	46	0			250.00	125.00	125.00	
			0	9	11	5	0	0	0	35	0						
									8	33	0						
			6												.00		
Jones, D. E.	25½									6	0						
Cement Driver			7½	13	8	14½	9	15	11	36½	0			150.00	75.00	75.00	
			6	13½	7½	8	8	DO	DO	73	0						
										43	0						
			DO												.00		
Marker, L. E.	65½									0	0						
Cement Driver			8	0	0	0	9	7	7	72½	0			150.00	75.00	75.00	
			8	8	7	7	9	11	16½	31	0						
										66½	0						
			8												.00		
Preston, T. J.	27									8	0						
Cementer			7	8	8	7	16	5	7	34	0			175.00	87.50	87.50	
			0	5	6	6	0	0	11	62	0						
									7	24	0						
			0												.00		
Reynolds, J. K.	35									0	0						
Well-logging Operator			DO	7	7	7	7	7	4	39	0			250.00	125.00	125.00	
			DO	7	7	7	7	7	4	39	0						
									4	39	0						
			DO												.00		
Sutherland, L. C.	36									0	0						
Echometer Operator			0	7	11	10	11	11	0	36	0			240.00	120.00	120.00	
			14	0	0	0	0	0	11	61	0						
									0	14	0						
			0												.00		
Weaver, F. L.	41									0							
Cementer			0	7	7	0	11	5	6	47	0			200.00	100.00	100.00	
			0	9	13	8	6	8	8	38	0						
										52	0						
			0												.00		
Feb. 1-15 1943	Alexander, H. L.	0								0	0						
	Cementer			DO	DO	0	9	14	0	23	0			250.00	125.00	125.00	
			15	21	16	13	14	13	DO	92	8	5.92					
															5.92		
			DO	V						0	0			225.00	112.50	118.42	

Plaintiff's Exhibit No. 3—(Continued)

Schedule I. Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked (Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total in Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Feb. 1-15 1943	Allen, E. A.	0		0	0	7	15	16	7	45	0				
	Cemeht Driver		11	10	8	5	0	0	0	34	0			.00	
			0	9						9	0		175.00	87.50	87.50
	Bogrs, J. N.	0		0	0	6	DO	DO	6	12	0				
	Cement Driver		6	10	14	18	14	18	16½	96½	12½	7.75		7.75	
			19	16						35	0		190.00	95.00	102.75
	Kelsey, R. R.	0		8	10	9	DO	DO	5	32	0				
	Cementer		0	7	11	16	14	21	21	90	6	4.92		4.92	
			17	8						25	0		250.00	125.00	129.92
	Smith, R. S.	0		3	0	4	4	5	6	22	0				
	Halliburton-Yowell Operator		5	8	10	8½	6	7	8	52½	0			.00	
			4	11						15	0		245.00	122.50	122.50
	Marker, L. E.	7		10	13½	0	7	DO	DO	37½	0				
	Cement Driver		L	L	L	L	L	L	7	7	0			.00	
			12	10						22	0		175.00	87.50	87.50
	Wendorff, R. A.	6		9	4	6	7	7	0	39	0				
	Cementer		0	0	5	6	9	22	4	46	0			.00	
			4	6						10	0		250.00	125.00	125.00
	Reynolds, J. K.	0		7	7	7	7	7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7						7	0		240.00	120.00	120.00
Feb. 16-28 1943	Adams, W. A.	6			0	0	0	6	6	18	0				
	Cement Driver		0	10	21	16	3	0	0	50	0		165.00	82.50	82.50
	Alter, J. N.	4			0	6	11	7	4	32	0				
	Tester		0	0	8	6	7	6	6	33	0			.00	
			0							0	0		230.00	115.00	115.00
	Barnett, J. E.	0			7	7	7	7	0	28	0				
	Well-logging Driver		0	6	7	6	7	7	0	33	0			.00	
			0							0	0		175.00	87.50	87.50
	Hawes, M. T.	6			4½	9	5	0	0	24½	0				
	Cement Driver		0	18	11	15	23	8	11	86	2	1.09		1.09	
			12							12	0		165.00	82.50	83.59
	Reynolds, J. K.	7			7	7	7	7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO							0	0		240.00	120.00	120.00
					0	5	5	5	DO	30	0				

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Plaintiff's Exhibit No. 3—(Continued)

Schedule 1.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
March 16-31 1943	Doane, H. E. Tester	18			8	0	0	0	8	34	0				
			17	8	8	12	20	14	16	95	11	8.14		8.14	
			8	8	14	8				38	0		225.00	112.50	120.64
	Dobie, H. O. Tester	19			16	8	8	8	4	63	0				
			0	0	0	0	0	0	0	0	0			.00	
			0	0	0	0				0	0		250.00	125.00	125.00
	Reynolds, J. K. Well-logging Operator	7			7	7	7	7	4	39	0				
			DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7				21	0		240.00	120.00	120.00
April 1-15 1943	Adams, W. A. Cement Driver	46					10	14	8	78	0				
			0	4	0	0	0	0	7	11	0			.00	
			0	12	7	8	7			34	0		165.00	82.50	82.50
	Allen, F. A. Cement Driver	34					0	0	0	34	0				
			0	8	7	9	7	7	10	48	0			.00	
			15	10	7	7	7			46	0		175.00	87.50	87.50
	Beeler, O. I. Bulk-cement Driver	48					8	8	DO	64	0				
			DO	8	11	8	8	5	0	40	0			.00	
			7	6	8	12	9			42	0		150.00	75.00	75.00
	Hawes, M. T. Cement Driver	38					12	12	0	62	0				
			0	10	4	7	0	6	10	37	0			.00	
			0	9	8	9	9			35	0		165.00	82.50	82.50
	Newsom, J. D. Cement Driver	0					7	7	7½	21½	0				
			7	7	7	7	8	8	10	54	0			.00	
			14	10	8	7½	7			46½	0		150.00	75.00	75.00
	Perkins, R. W. Cementer	39					13	15	10	77	0				
			4	7	9	0	0	7	6	33	0			.00	
			7	7	8	9	9			40	0		250.00	125.00	125.00
	Reynolds, J. K. Well-logging Operator	21					7	7	4	39	0				
			DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7	7			28	0		240.00	120.00	120.00
	Sellers, W. W. Bulk-cement Driver	8					0	4	0	12	0				
			8	8	6	10	DO	DO	DO	32	0			.00	
			DO	7	DO	6	8			21	0		150.00	75.00	75.00
	Ware, J. B. Bulk-cement Driver	0					10½	13½	DO	24	0				
			10¼	8	6	DO	7	7	8	46½	0			.00	

	Ware, J. B.	0						10½	13½	DO	24	0					
	Bulk cement Driver		10½	8	6	DO	7	7	8		46½	0				.00	
			10½	5	9	6	7				37½	0		150.00		75.00	75.00
	Wilson, L. E.	70½					13	13½	8		105	21	13.02				
	Cement Driver		8	8	8	DO	DO	DO	8		32	0				13.02	
			8	15	12	9	10				54	0		190.00		95.00	108.02
April 16-30 1943	Adams, W. A.	34						0	7		41	0					
	Cement Driver		0	4	0	4	9	0	18		35	0				.00	
			0	7	9	0	0	0			16	0		165.00		82.50	82.50
	Boggs, J. N.	38						11	16		55	0					
	Cementer		6	7	DO	DO	DO	8	16		37	0				5.64	
			18	12	15	20	14	13			92	8	5.64	215.00		107.50	112.14
	Borden, L. L.	32						8	8		48	0					
	Bulk-cement Driver		0	8	8	8	8	8	DO		40	0				.00	
			DO	8	8	14½	21	24			75½	0		175.00		87.50	87.50
	Henderson, Clifford	29						0	0		29	0					
	Cementer		0	16	15	7	7	15	11		71	0				.00	
			3	15	9	16	11	17			71	0		250.00		125.00	125.00
	Hill, Gregg	37						DO	DO		37	0					
	Bulk-cement Driver		16	15	16	22	21	15	16		121	37	21.09			21.09	
			10	12	9	13	11	15			70			175.00		87.50	108.59
	Kelsey, R. R.	33						DO	DO		33	0					
	Cementer		16	15	16	22	21	15	16		121	37	30.34			30.34	
			10	12	9	13	11	15			70	0		250.00		125.00	155.34
	Newton, A. L.	24						8	8		40	0					
	Cement Driver		1	13½	8	7	9	17	0		55½	0				.00	
			3	9½	9½	7½	5	7			41½	0		180.00		90.00	90.00
	Preston, T. J.	42						7	18		57	0					
	Cementer		7	7	0	0	0	0	18		32	0				.00	
			15	12	10	10	7	7			61	0		250.00		125.00	125.00

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
April 16-30	Reynolds, J. K.	28						7	4	39	0				
1943	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7	7	7		35	0		250.00	125.00	125.00
	Sutherland, L. C.	23						7	4	34	0				
	Echometer Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7	7	7		35	0		200.00	100.00	100.00
	Wininger, G. E.	24						4	9	37	0				
	Cementer		0	4	8	4	9	0	18	43	0			.00	
			4	0	8	12	10	14		48	0		215.00	107.50	107.50
	Adams, W. A.	16							0	16	0				
	Cement Driver		4	0	13	9	17	6	16	65	0			.00	
			24	3	14	3	0	0	13	57	0		185.00	92.50	92.50
May 1-15	Alexander, H. L.	25							12	37	0				
1943	Cementer		21	13	13	14	11	10	0	82	0			.00	
			DO	10	10	10	9	8	6	53	0		255.00	127.50	127.50
	Dillon, C. W.	14							13	27	0				
	Cement Driver		11	9	8½	11	7	11½	8	66	0			.00	
			8½	10	10	DO	7½	8½	0	44½	0		150.00	75.00	75.00
	Hawes, M. T.	49							5	54	0				
	Cement Driver		0	6	13	17	5	8	9	58	0			.00	
			6	11	5	6	3½	0	0	31½	0		185.00	92.50	92.50
	Preston, T. J.	61							15	76	0				
	Cementer		8	7	7	14	11	6	7	60	0			.00	
			0	12	7	7	0	0	0	26	0		275.00	137.50	137.50
	Reynolds, J. K.	35							4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7	7	7	4	39	0		265.00	132.50	132.50
	Ware, J. B.	23							12	35	0				
	Bulk-cement Driver		21	19	21	21	19	10	3	114	30	17.10		17.10	
			3	10	13	16	DO	DO	9	51	0		175.00	87.50	104.60
	Weaver, F. A.	8							S	8	0				
	Cementer		S	S	S	S	8	9	7	24	0			.00	

	Wendorff, R. A.	57	8	8	8	8	6½	9	8	55½	0			.00				
	Cementer		0	6	13	17	7	11	10	67	0		275.00	137.50	137.50			
			11	14	0	0	0	8	15	69	0							
	Wininger, G. E.	48							0	33	0			.00				
	Cementer		15	9	13	9	5	6	8	56	0		275.00	137.50	137.50			
									0	57	0							
May 16-31 1943	Adams, W. A.		0	0	0	16	0	0	8	24	0			.00				
	Cement Driver		2	0	3	9	15	18	7	54	0		230.00	115.00	115.00			
			6	14	6	4	0	0	0	30	0							
	Alexander, H. L.		0	7														
	Cementer		5	2	4	7	8	0	0	7	0			.00				
			0	0	0	8	7	0	0	26	0		185.00	92.50	92.50			
										15	0							
	Allen, F. A.		8	0														
	Cement Driver		0	0	0	0	0	0	0	8	0			.00				
			0	0	0	0	0	7	7	0	0		255.00	127.50	127.50			
										14	0							
	Ferre, S. D.		4	7														
	Cementer		DO	9	7	7	7	9	0	11	0			.00				
			7	11	8		DO	11	13	39	0		200.00	100.00	100.00			
										57	0							
	Preston, T. J.		5	7														
	Cementer		0	7	7	7	V	V	V	12	0			.00				
			V	V	V	V	V	V	V	21	0		230.00	115.00	115.00			
										0	0							
	Reynolds, J. K.		V	V														
	Well-logging Operator		DO	7	7	7	7	7	4	0	0			.00				
			DO	7	7	7	7	7	4	39	0		275.00	137.50	137.50			
June 1-15 1943	Adams, W. A.	7	DO	7						39	0							
	Cement Driver				2	7	7	7	7	7	0			.00				
			12	19	8	11	8	12	23	37	0		265.00	132.50	132.50			
										93	9	5.45						
	Alexander, H. L.	8	4	5	6									5.45				
	Cementer				5	0	0	3	3	15	0							
			DO	4	12	21	15	18	14	19	0		185.00	92.50	97.95			
										84	0							
	Allred, J. T.	12	19	17	21									.00				
	Bulk-cement Driver				DO	DO	8	8	8	57	0							
			8	11	8	6	8	11	9	36	0		255.00	127.50	127.50			
										61	0							
			4	8	8									.00				
										20	0		185.00	92.50	92.50			

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
June 1-15 1943	Boggs, J. N.	11		-	6	6	8	DO	DO	31	0				
	Cementer		21	20	15	15	13	11	14	109	25	18.75		18.75	
			15	8	11					34	0		230.00	115.00	133.75
	Byers, H. H.	8	-	20	0	0	0	0	0	8	0				
	Cementer		0	14	6	4	0	3½	0	27½	0			.00	
			0	0	0					0	0		275.00	137.50	137.50
	Gilchrist, T. A.	0			8	8	8	8	8	40	0				
	Bulk-cement Driver		13	12½	8½	15	9½	6	8	72½	0			.00	
			8	12½	3					23½	0		150.00	75.00	75.00
	Kennedy, H. V.	0			0	0	5	0	6	11	0				
	Cementer		8	6	7	6½	2	0	7	36½	0			.00	
			0	8½	7					15½	0		250.00	125.00	125.00
	McClanahan, D. S.	32			8	8	8	8	8	72	0				
	Bulk-cement Driver		8	8	DO	DO	8	8	8	40	0			.00	
			8	8	8					24	0		150.00	75.00	75.00
	Reynolds, J. K.	7			7	7	7	7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7					14	0		265.00	132.50	132.50
	Sutherland, L. C.	7			7	7	7	6	5	39	0				
	Echometer Operator		DO	11½	11	11	12	15	9	69½	0			.00	
			DO	13	7					20	0		215.00	107.50	107.50
	Wininger, G. E.	0			DO	DO	DO	DO	8	8	0				
	Cementer		8	15	5	3	4	0	14	49	0			.00	
			20	3	6					29	0		230.00	115.00	115.00
June 16-30 1943	Adams, W. A.	15				8	4	7	3	37	0				
	Cement Driver		0	0	0	0	0	0	10	10	0			.00	
			0	9	3	7				19	0		185.00	92.50	92.50
	Barnett, J. E.	14				7	7	7	4	39	0				
	Well-logging Driver		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7				21	0		200.00	100.00	100.00
	Baxter, E. P.	20				0	2	6	3	31	0				
	Cementer		0	4	4½	5½	5	7½	8½	35	0			.00	
			5	6	8	7				26	0		165.00	82.50	82.50
	Byers, H. H.	0				8	5	7½	8	28½	0				
	Cementer		0	4½	0	8½	0	0	0	13	0			.00	

		5	6	8	7				26	0					
Byers, H. H.	0				8	5	7½	8	28½	0		165.00	82.50	82.50	
Cementer		0	4½	0	8½	0	0	0	13	0			.00		
		0	6	0	0				6	0		275.00	137.50	137.50	
Felice, S. D.	15				8	8	15	7	53	0					
Cementer		0	DO	8	7	7	7	7	36	0			.00		
		13	8	DO	7				28	0		230.00	115.00	115.00	
Green, Leroy	14				6	9	14	8	51	0					
Cement Driver		0	9	DO	7	7	7	7	37	0			.00		
		9	8	8	7				32	0		165.00	82.50	82.50	
Kennedy, H. V.	15½				3	8½	6	3	36	0					
Cementer		8	5	11	10	5	4	4	47	0			.00		
		18	18	7½	4				47½	0		250.00	125.00	125.00	
Reynolds, J. K.	14				7	7	7	4	39	0					
Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00		
		DO	7	7	7				21	0		265.00	132.50	132.50	
Sutherland, L. C.	20				10	11	11	13	65	0					
Echometer Operator		DO	7	6	7	8	9	0	37	0			.00		
		5½	10	10	10				35½	0		215.00	107.50	107.50	
Thomas, E. T.	24				7	9	10	4	54	0					
Cement Driver		0	7	8	10	0	7	7	39	0			.00		
		5	7	7	7				26	0		200.00	100.00	100.00	
Wilson, C. L.	0				V	V	V	V	0	0					
Cementer		V	V	V	V	0	0	3½	3½	0			.00		
		6½	12	12½	14				45	0		265.00	132.50	132.50	
Wininger, G. E.	29				7	7	0	11	54	0					
Cementer		0	3	8	8	8	7	6	40	0			.00		
		6	6	3	7				22	0		230.00	115.00	115.00	
Young, Lyman	0				9	9	8	8	34	0					
Well-logging Driver		0	8	8	8	8	8	8	48	0			.00		
		0	8	8	8				24	0		165.00	82.50	82.50	

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
July 1-15 1943	Adams, W. A.	19					5	6	7	37	0				
	Cement Driver		7	0	0	7	7	7	7	35	0			.00	
			7	7	7	0	0			21	0		185.00	92.50	92.50
	Alexander, H. L.	64					18	19	0	101	17				
	Cement Driver		0	0	0	5	9	0	3	17	0			.00	
			12	14	17	17	21			81	0		255.00	127.50	127.50
	Allen, F. A.	31					6	10	8	55	0				
	Cement Driver		9	7	7	7	0	0	0	30	0			.00	
			0	8	7	13	7			35	0		200.00	100.00	100.00
	Alter, J. N.	16					0	9	10	85	0				
	Tester		11	14	14	16	10	8	9	82	0			3.48	
			8	16	24	24	16			88	4	3.48	265.00	132.50	135.98
	Byers, H. H.	6					DO	DO	6	12	0				
	Cementer		4	5	8	7	10	10	6	50	0			.00	
			0	13	13	5	4			35	0		275.00	137.50	137.50
	Cummins, G. L.	58½					9½	6½	16	90½	6½	4.26			
	Cementer		12½	DO	DO	DO	DO	7½	12½	32½	0			4.26	
			9	7	3	0	5			24	0		200.00	100.00	104.26
	Kennedy, H. V.	47½					13	4	4½	79	0				
	Cementer		0	3	8	4	0	0	8½	23½	0			.00	
			9	7	3	3½	6½			29	0		250.00	125.00	125.00
	Newsom, J. D.	8					8	8	7	31	0				
	Cement Driver		0	4	8	8	8	8	8	44	0				
			8	11	14	8	8			49	0		175.00	87.50	87.50
	Newton, A. L.	0					V	V	V	0	0				
	Cement Driver		V	V	V	7	7	4	6	24	0			.00	
			7½	6	7	19	10			49½	0		200.00	100.00	100.00
	Reynolds, J. K.	21					7	7	4	39	0				
	Well-logging Operator		DO	DO	7	7	7	7	4	32	0			.00	
			DO	DO	7	7	7	7		28	0		265.00	132.50	132.50
	Roe, T. O.	23½					4	4	DO	31½	0				
	Tester		3½	5½	10	14½	5	6	12	56½	0			.00	
			10	15	16½	17	14			72½	0		255.00	127.50	127.50
	Sutherland, L. C.	35½					10½	14½	4	64½	0				
	Echometer Operator		DO	4	7½	7	7	10	4	39½	0			.00	

			10	15	16½	17	14			72½	0	255.00	127.50	127.50
	Sutherland, L. C.	35½					10½	14½	4	64½	0			
	Echometer Operator		DO	4	7½	7	7	10	4	39½	0		.00	
			DO	7	10	7	7			31	0	215.00	107.50	107.50
	Thompson, R. B.	8					8	8	14	38	0			
	Bulk-cement Driver		0	9	9	8	8	9	10	53	0		.00	
			0	6	9	12½	10½			38	0	165.00	82.50	82.50
	Wininger, G. E.	22					0	0	0	22	0			
	Cementer		0	0	0	2	0	0	0	2	0		.00	
			8	4	13	0	0			25	0	230.00	115.00	115.00
July 16-31 1943	Adams, W. A.	21						0	0	21	0			
	Cement Driver		6	8	8	8	8	8	9	55	0		.00	
			0	7	7	7	7	7	7	42	0	185.00	92.50	92.50
	Baxter, E. P.	62						11½	4	77½	0			
	Bulk-cement Driver		0	7½	7½	7½	10½	5	0	38	0		.00	
			0	12	6	7	7	8	0	40	0	165.00	82.50	82.50
	Beck, T. C.	21						14	11	46	0			
	Cementer		6	16	8	12	16	8	11	77	0		.00	
			2	8½	9	11	8	DO	DO	38½	0	275.00	137.50	137.50
	Byers, H. H.	35						DO	DO	35	0			
	Cementer		0	4	7½	6	0	8½	8	34	0		.00	
			9	8½	8	4	8	7	8	52½	0	275.00	137.50	137.50
	Caton, K. P.	35½						0	0	35½	0			
	Cement Driver		0	8	10½	15	17	12	8	70½	0		.00	
			0	9	8	8	16	0	7	48	0	175.00	87.50	87.50
	Clegg, E. E.	24						14	8	46	0			
	Cement Driver		3	16	9	13	8	8	8	65	0		.00	
			8	8	8	DO	DO	8	8	40	0	200.00	100.00	100.00
	Cummins, G. L.	24						4	8½	36½	0			
	Bulk-cement Driver		0	4	11½	11	6½	0	11	44	0		.00	
			0	8	DO	9½	7½	15	0	50	0	200.00	100.00	100.00
	Ferre, S. D.	49						13	DO	62	0			
	Cementer		0	7	7	7	9	DO	7	37	0		.00	
			0	10	7	10	14	6	7	54	0	240.00	120.00	120.00

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
July 16-31 1943	Green, Leroy	57						14	7	78	0				
	Cement Driver		0	7	7	7	8	7	0	36	0			.00	
			4	7	7	11	14	7	6	56	0		165.00	82.50	82.50
	Hawes, M. T.	28						6	5	39	0				
	Cement Driver		13½	4	10	10	5	4	7	63½	0			.00	
			14	11	13	10	15	12	9	84	0		200.00	100.00	100.00
	Henderson, Clifford	57						9	17	83	0				
	Cementer		4	0	0	0	0	0	0	4	0			.00	
			0	0	8	8	9	9	7	41	0		275.00	137.50	137.50
	James, F. H.	35						7	0	40	0				
	Bulk-cement Driver		0	8	11	5	9	8	8	49	0			.00	
			5	9	8	9	7	7	10	55	0		165.00	82.50	82.50
	Kennedy, H. V.	29						4	8½	41½	0				
	Cementer		0	4	10½	11	6½	0	11	43	0			.00	
			0	4	4	0	0	4½	5	17½	0		250.00	125.00	125.00
	McAdams, R. M.	34½						0	0	34½	0				
	Cementer		0	16	14	9	16	12	8	75	0			.00	
			0	10	7	8	13	7	7	52	0		265.00	132.50	132.50
	Newsom, J. D.	49						9	17	75	0				
	Cement Driver		0	8	8	15	17	12	8	68	0			.00	
			0	8	7	0	0	0	0	15	0		190.00	95.00	95.00
	Newton, A. L.	49½						3	7	59½	0				
	Cement Drivre		8	DO	7	0	9	7½	7½	39	0			.00	
			0	9	7½	8½	7	8	8	48	0		200.00	100.00	100.00
	Reynolds, J. K.	28						7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7	7	7	4	39	0		265.00	132.50	132.50
	Roe, T. O.	72½						DO	6	78½	0				
	Tester		0	6	5	8	16	5	DO	40	0			.00	
			15	23	5	6	7	11	5	72	0		255.00	127.50	127.50
	Thompson, R. B.	38						10	11	59	0				
	Bulk-cement Driver		4	11	9	15	5½	10	5	59½	0			.00	
			0	8	DO	DO	8	15	7½	38½	0		165.00	82.50	82.50
	Vaughn, F. E.	48						8	14	70					
	Cementer		8	8	15	17	18	21	15	102	18	13.05		13.05	

			0	8	DO	DO	8	15	7½	38½	0		165.00	82.50	82.50
	Vaughn, F. E.	48						8	14	70					
	Cementer		8	8	15	17	18	21	15	102	18	13.05		13.05	
			DO	DO	8	8	8	8	8	40	0		220.00	110.00	123.05
	Wendorff, R. A.	32						6	0	38	0				
	Cementer		13	5½	20	10	7	7	8	70½	0			2.72	
			14	12	13	10	15	12	11	87	3	2.72	275.00	137.50	140.22
	Wininger, G. E.	25						0	0	25	0				
	Cementer		12	7	5	6	15	5	7	57	0			.00	
			0	0	0	0	0	0	0	0	0		230.00	115.00	115.00
Aug. 1-15 1943	Allen, F. A.		11	9	7	7	15	15	7	71	0				
	Cement Driver		0	11	8	7	0	0	7	33	0			.00	
			12							12	0		200.00	100.00	100.00
	Hawes, M. T.		10	5	5	9	7	17	9	62	0				
	Cement Driver		0	0	0	0	6	7	13	26	0			.00	
			6							6	0		200.00	100.00	100.00
	Mantz, Edward		8	8	8	DO	DO	DO	DO	24	0				
	Cement Driver		8	10	14	15	14	16	17	94	10	6.20		6.20	
			9							9	0		190.00	95.00	101.20
	Reynolds, J. K.		DO	7	7	7	7	7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	0									265.00	132.50	132.50
Aug. 16-31 1943	Adams, W. A.	0		7	7	7	16	7	7	51	0				
	Cement Driver		0	0	0	0	0	7	7	14	0			.00	
			6	7	10					23	0		200.00	100.00	100.00
	Cation, K. P.	0		0	0	0	9½	14½	6	30	0				
	Cement Driver		11	15	8	16	14	15	19	98	14	7.98		7.98	
			14	14	15					43	0		175.00	87.50	95.48
	Adams, R. M.	0		0	0	8	9½	14½	6	38	0				
	Cementer		11	15	8	4	V	V	V	38	0			.00	
			V	V	V					0	0		275.00	137.50	137.50

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK							Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
			S	M	T	W	T	F	S						
Aug. 16-31 1943	Reynolds, J. K. Well-logging Operator	0		7	7	7	7	7	4	39	0				
			DO	7	7	7	7	7	4	39	0			.00	
	Wilson, L. E. Cement Driver	8	DO	7	7					14	0		265.00	132.50	132.50
				9	9	DO	DO	DO	8	34	0				
			13½	13	8	15	9	8	8	74½	0			.00	
Sept. 1-15 1943	Alter, J. N. Tester	0	8	8	8					24	0		200.00	100.00	100.00
						6	8	10	11	35	0				
			15	19	16	18	19	24	16	127	43	38.92		38.92	
	Byers, H. H. Cementer	23	11	9	8	8				36	0		275.00	137.50	176.42
						DO	DO	DO	DO	23	0				
			8	8	16	9	8	8	8	65	0			.00	
	Kennedy, H. V. Cementer	11½	14	13	16	8				51	0		275.00	137.50	137.50
						DO	DO	DO	14½	26	0				
			9	11½	8	8	16½	8½	19½	81	0			.00	
	McAdams, R. M. Cementer	0	0	5	13	7½				25½	0		265.00	132.50	132.50
			V	V	V	V	V	V	V	0	0				
						7	7	7	7	21	0			.00	
	Reynolds, J. K. Well-logging Operator	14	0	9½	16	15				40½	0		275.00	137.50	137.50
			DO	7	7	7	7	7	5	40	0				
						7	7	7	5	40	0			.00	
	Wininger, G. E. Cementer	12	DO	7	7	7				21	0		265.00	132.50	132.50
						4	0	0	0	16	0				
			0	12	0	0	0	9	6	27	0			.00	
Sept. 16-30 1943	Adams, W. A. Cement Driver	21	8	9	14	22				53	0		240.00	120.00	120.00
							7	6	12	46	0				
			6	0	0	0	0	7	18	31	0			.00	
	Aller, F. A. Cement Driver	14	11	7	11	8	7			44	0		200.00	100.00	100.00
							0	0	0	14	0				
			0	7	8	18½	10	8	7	58½	0			.00	
	Barbour, C. H. Bulk-cement Driver	18½	13	7	11	9	7			47	0		200.00	100.00	100.00
							8½	3	16	46	0				
			13½	DO	3	12½	10½	0	0	39½	0			.00	
	Cross, C. E. Tester	16	0	9½	13½	0	0			23	0		165.00	82.50	82.50
							0	11	12	39	0				
			17	8	15	13	8	8	8	77	0			.00	
			8	17	16										

			0	9½	13½	0	0			23	0		165.00	82.50	82.50
	Cross, C. R.	16					0	11	12	39	0				
	Tester		17	8	15	13	8	8	8	77	0			.00	
			8	17	16	17	16			74	0		275.00	137.50	137.50
	Reynolds, J. K.	21					7	7	5	40	0				
	Well-logging Operator		DO	7	7	7	7	7	5	40	0			.00	
			DO	7	7	7	7			28	0		265.00	132.50	132.50
	Thompson, W. N.	30					5	6	14	55	0				
	Tester		0	8	5	4	3	9	4	33	0			.00	
			9½	17	4	18	6			54½	0		225.00	112.50	112.50
Oct. 1-15	Adams, W. A.	44						7	7	58	0				
1943	Cement Driver		0	10	7	0	0	0	0	17	0			.00	
			0	7	7	7	7	7		35	0		200.00	100.00	100.00
	Henderson, Clifford	11						8	11	30	0				
	Cementer		5	15	9	8	8	8	17	70	0			.00	
			3	16	16	8	8	8		59	0		275.00	137.50	137.50
	Newsom, J. D.	4						8	8	20	0				
	Cement Driver		0	13	8	8	8	8	17	62	0			.00	
			0	16	16	8	8	8		56	0		200.00	100.00	100.00
	Reynolds, J. K.	28						7	4	39	0				
	Well-logging Operator		DO	7	7	7	7	7	4	39	0			.00	
			DO	7	7	7	7	7		35	0		275.00	137.50	137.50
	Sides, F. J.	62½						16	8½	87	3	1.71			
	Bulk-cement Driver		0	8	13	7	DO	DO	11	39	0			1.71	
			4½	12	16	8	7½	9½		57½	0		175.00	87.50	89.21
	Wendorff, R. A.	43						8	8	59	0				
	Cementer		0	8	5	9	DO	DO	4	26	0			.00	
			0	9	9	16	8	8		50	0		275.00	137.50	137.50
Oct. 16-31	Allen, F. A.	65							7	72	0				
1943	B-III b-1		0	7	7	7	7	10	10	48	0				
			16	7	10	0	0	0	0	33	0			.00	
			0							0	0		200.00	100.00	100.00

Plaintiff's Exhibit No. 3—(Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Oct. 16-31 1943	Ferre, S. D.	73							9	82	0				
	B-III a-1		8	0	0	0	0	13	17	38	0				
			10	15	10	7	7	7	0	56	0			.00	
			0							0	0		250.00	125.00	125.00
	Graham, W. J.	15½							15½	31	0				
	B-III b-3		0	DO	DO	8	11	16½	7	42½	0				
			7½	4	9	6	4	9	10	49½	0			.00	
			0							0	0		165.00	82.50	82.50
	Newsom, J. D.	56							8	64	0				
	B-III b-1		8	0	DO	DO	DO	8	8	24	0				
			8	8	8	8	16	14	7	69	0			.00	
			0							0	0		200.00	100.00	100.00
	McClellan, L. L.	37							DO	37	0				
	B-III b-3		6	8	18	10	8	12	14½	76½	0				
			10	19	9	16	11	18	13	96	12	7.86		7.86	
			10							10	0		200.00	100.00	107.86
	Parcher, H. L.	32							8	40	0				
	B-III b-3		8	8	8	8	8	8	8	56	0				
			8	8	12	13	8	9	10	68	0			.00	
			8½							8½	0		165.00	82.50	82.50
	Weaver, F. A.	19							0	19	0				
	B-III a-1		0	13	8	8	9	11	15	64	0				
			9	8	8	12	8	0	8	53	0			.00	
			8							8	0		275.00	137.50	137.50
Nov. 1-15 1943	Adams, W. A.	17		23	7	7	14	7	7	82	0				
	Cement Driver			4	7	DO	DO	DO	DO	11	0			.00	
				0	7					7	0		200.00	100.00	100.00
	Blaisdell, C. H.	0		DO	DO	DO	DO	8½	12	20½	0				
	Cement Driver		8	8	8	11½	8	13	8	64½	0			.00	
			19	8						27	0		200.00	100.00	100.00
	Byers, H. H.	9		DO	DO	DO	DO	8	8	25	0				
	Cementer		8	8	8	9	8	13	9	63	0			.00	
			19	8						27	0		275.00	137.50	137.50
	Henderson, Clifford	12		23	4	8	15	8	8	78	0				
	Cementer		4	8	15	DO	DO	DO	DO	27	0			.00	
			DO	7						7	0		275.00	137.50	137.50

		DO	7						7	0		275.00	137.50	137.50
	Reynolds, J. K.	0		7	7	7	7	7	4	39	0				
	Electrical Survey		0	7	7	7	7	7	DO	35	0			.00	
	Operator														
			4	7						11	0		275.00	137.50	137.50
Nov. 16-30	Allen, F. A.	19			8	13	7	7	9	63	0				
1943	Cement Driver		5	0	0	0	0	7	14	26	0			.00	
			0	7	7					14	0		200.00	100.00	100.00
	Cation, K. P.	0			DO	DO	DO	8	12	20	0				
	Cement Driver		7	18½	15	23½	0	9	16	89	5	3.28		3.28	
			10	9	13					32	0		200.00	100.00	103.28
	Combs, Alfred	20			7	12	7	7	9	62	0				
	Cementer		4	0	0	0	0	7	14	25	0			.00	
			0	7	7					14	0		275.00	137.50	137.50
	Easterling, J. F.	38			21	22	18	20	20	139	55	34.10			
	Bulk-cement Driver		14	DO	DO	8	4	7	7	40	0			34.10	
			8	9	15					32	0		190.00	95.00	129.10
	Franzen, E. R.	36½			19	20½	20	18½	11	125½	41½	27.18			
	Cement Driver		6	7	8	7	DO	DO	8	36	0			27.18	
			15	11	15½					41½	0		200.00	100.00	127.18
	McAdams, R. M.	8			DO	DO	DO	8	12	28	0				
	Cementer		7	18½	15	23½	0	9	16	89	5	4.53		4.53	
			10	8	13					31	0		275.00	137.50	142.03
	Perkins, R. W.	33			18	19	13	14	11	108	24	21.72			
	Cementer		4	7	7	6	0	0	8	32	0			21.72	
			7	8	14					29	0		275.00	137.50	159.22
	Reynolds, J. K.	11			7	7	7	7	7	46	0				
	Electrical-Survey		DO	7	7	7	7	7	4	39	0			.00	
	Operator														
			DO	7	7					14	0		275.00	137.50	137.50
	Sanders, W. D.	0			DO	11	4	4½	7½	27	0				
	Bulk-cement Driver		0	4½	7	8	0	7	15½	42	0			.00	
			0	7½	3½					11	0		165.00	82.50	82.50

Plaintiff's Exhibit No. 3—(Continued).

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweek in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Dec. 1-15 1943	Byers, H. H.	40				DO	DO	DO	DO	40	0				
	Cementer		8	8	8	13	8	8	6	59	0			.00	
			0	5	6	6				17	0		275.00	137.50	137.50
	Osgood, E. J.	0				X	X	X	4	4	0				
	Bulk-cement Driver		5	7	8	15	16	15	14	80	0			.00	
			8	13	DO	8				29	0		175.00	87.50	87.50
	Parker, C. A.	9				DO	DO	8	0	17	0				
	Tester		8	8	13	16	8	8	8	69	0			.00	
			9	16	0	0				25	0		275.00	137.50	137.50
	Sanders, W. D.	11				DO	DO	11	6½	28½	0				
	Bulk-cement Driver		11	12	17	20	0	8	12½	80½	0			.00	
			7	8	0	DO				15	0		175.00	87.50	87.50
Dec. 16-31 1943	Allred, J. T.	0					8	9	9	26	0				
	Cement Driver		8	8	9	14	12	9	8	68	0			.00	
			9	13	16	15	12	8		73	0		200.00	100.00	100.00
	Alexander, H. L.	48					DO	12	7	67	0				
	Tester		3	4	4	4	15	DO	0	30	0			.00	
			8	16	4	5	4	3		40	0		275.00	137.50	*137.50
	Barclay, G. W.	49½					8	9	15	81½	0				
	Tester		DO	8	8	8	DO	8	8	40	0			.00	
			17	9	8	16	7	DO		57	0		265.00	132.50	*132.50
	Cation, K. P.	31					DO	DO	9	40	0				
	Cement Driver		5	DO	DO	DO	DO	8½	DO	13½	0			6.55	
			10	17	16	24	18	9		94	10	6.55	200.00	100.00	*106.55
	Combs, Alfred	27					13	13	8	61	0				
	Cementer		DO	11	14	4	DO	DO	DO	29	0			.00	
			3	8	16	6	10	7		50	0		275.00	137.50	*137.50
	Easterling, J. F.	40					7	7	7	61	0				
	Bulk-cement Driver		7	7	7	DO	DO	8	4	33	0			.00	
			21	13	7	7	7	7		62	0		195.00	97.50	* 97.50
	Ferre, Val	42					7	7	7	63	0				
	Cementer		8	7	7	DO	DO	7	3	32	0			.00	
			21	13	8	11	12	8		73	0		265.00	137.50	*137.50
	Perkins, R. W.	32					7	7	DO	46	0				
	Cementer		DO	DO	DO	6	14	6	DO	26	0			.00	

	Perkins, R. W.	32					7	7	DO	46	0				
	Cementer		DO	DO	DO	6	14	6	DO	26	0			.00	
			DO	14	8	7	5	13		47	0		275.00	137.50	*137.50
	Roe, T. O.	48½					7	DO	9	64½	0				
	Tester		16	7	DO	DO	DO	DO	0	23	0			.00	
			13	24	4	7	8	7		63	0		265.00	132.50	*132.50
	Ross, J. P.	44					DO	DO	12½	56½	0				
	Bulk-cement Driver		DO	5½	8½	8½	15	DO	0	37½	0			.00	
			9	10	9	10	8	12		58	0		200.00	100.00	*100.00
	Sutherland, L. C.	22					7	7	7	43	0				
	Electrical Survey Operator		DO	7	7	7	7	7	0	35	0			.00	
			DO	7	7	7	7	7		35	0		225.00	112.50	*112.50
	Wendorff, R. A.	10					6	13	9	38	0				
	Cementer		9	15	12	14	13	15	12	90	6	5.58		5.58	
			6	9	9	14	5	9		52	0		285.00	142.50	*148.08
Jan. 1-15 1944	Adams, W. A.	46							7	53	0				
	Cement Driver		0	7	7	7	DO	DO	7	28	0			.00	
			DO	11	8	12	8	15	8	62	0		200.00	100.00	100.00
	Alexander, H. L.	40							DO	40	0				
	Tester		10	12	5	17	DO	5	17	66	0			.00	
			DO	DO	DO	DO	DO	5	8	13	0		275.00	137.50	137.50
	Allred, J. T.	73							8	81	0				
	Cement Driver		10	21	13	9	12	15	12	92	8	5.24		5.24	
			11	4	14	DO	DO	DO	DO	29	0		200.00	100.00	105.24
	Byers, H. H.	48							DO	48	0				
	Cementer		DO	DO	DO	8	8	8	14	38	0			20.36	
			22	23	18	10	14	10	9½	106½	22½	20.26	275.00	137.50	157.86

[Printer's Note]: * Figures in pencil.

Plaintiff's Exhibit No. 3-A (Continued)

Schedule I.—Payroll Periods in Which Guarantee Was Paid for Workweek in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Jan. 1-15 1944	Combs, Alfred	50							0	50	0				
	Cementer		DO	7	7	7	DO	DO	6	27	0			.00	
			2	11	8	13	7	13	7	61	0		275.00	137.50	137.50
	Davis, Alfred	34							DO	34	0				
	Bulk-cement Driver		DO	DO	DO	9	15	18	8	50	0			4.24	
			12	15	14	14	18	10	8	91	7	4.24	185.00	92.50	96.74
	Ferre, S. D.	37							DO	37	0				
	Cementer		9	7	7	10	DO	8	11	52	0			.00	
			14	7	8	DO	12	7	7	55	0		265.00	132.50	132.50
	Fullinwider, E. E.	36							DO	36	0				
	Field Mechanic		DO	10	9	10	9	9	9	56	0			.00	
			8	9	10	10	10	10	DO	57	0		230.00	115.00	115.00
	Hawes, M. T.	43							DO	43	0				
	Cementer		DO	6	6	8	7	5	DO	32	0			.00	
			8	14	13	8	12	8	12	75	0		225.00	112.50	112.50
	McAdams, R. M.	35							DO	35	0				
	Cementer		DO	15	13	8	10½	15	11	72½	0			4.98	
			7	15	24	10½	9	14	10	89½	5½	4.98	275.00	137.50	142.48
	Parcher, H. L.	45							DO	45	0				
	Bulk-cement Driver		DO	DO	DO	DO	6	10	14	30	0			.00	
			8	12	14	11	2	2	9	58	0		195.00	97.50	97.50
	Perkins, R. W.	32							6	38	0				
	Cementer		5	5	8	19½	18	14½	14	84	0			.00	
			DO	DO	12	14	13½	14	8	61½	0		275.00	137.50	137.50
	Sutherland, L. C.	35							DO	35	0				
	Electrical-Survey Operator		DO	7	7	7	7	7	7	42	0			.00	
			DO	7	7	7	7	7	7	42	0		225.00	112.50	112.50
	Weaver, F. L.	56							9	65	0				
	Cementer		DO	8	10	9	8	12	8	55	0			.00	
			DO	8	8	8	8	7	DO	39	0		275.00	137.50	137.50
	Wendorff, R. A.	52							DO	52	0				
	Cementer		10	7	DO	DO	DO	8	9	34	0			.00	
			4	14	9	10	8	8	12	65	0		285.00	142.50	142.50
	W. J. Graham	21							10	31	0				
	Bulk-cement Driver		DO	11	7½	3	2½	DO	11½	35½	0			.00	
			14½	12	10	10	DO	DO	3	49½	0		200.00	100.00	100.00

[Endorsed]: Filed 5/16/44

(Testimony of Bertha Morse.)

Miss Williams: If your Honor please, I would like to have marked for identification as Plaintiff's Exhibit 4—I beg your pardon—it is Plaintiff's Exhibit 3-A in evidence.

The Clerk: In evidence or for identification?

Miss Williams: For identification.

This is another exhibit entitled the same way, "Payroll Period in which Guarantee was paid for Work Weeks in which no Overtime was Worked."

The Clerk: Plaintiff's Exhibit 3-A for identification.

(The document referred to was marked as Plaintiff's Exhibit No. 3-A, for identification.)

Direct Examination (Continued)

By Miss Williams:

Q. Miss Morse, I hand you Plaintiff's Exhibit 3-A for identification, and ask if you prepared that exhibit also? A. Yes, I did.

Q. That was also prepared from defendant's records, was it, Miss Morse?

A. That is right.

Q. In a somewhat similar fashion to the testimony you have given with reference to Plaintiff's Exhibit 3? A. That is correct. [40]

Q. What pay roll period does it cover, what dates?

A. The dates on here are from January 30, 1944, through March 11, 1944.

Q. What is the difference between that Exhibit for identification 3-A, and Plaintiff's Exhibit 3, which is already in evidence?

(Testimony of Bertha Morse.)

A. This covers the period during which a bi-weekly, rather than a semi-monthly pay roll was used by the defendant.

Q. Is each entry an exact copy from Defendant's payroll? A. Yes, that is correct.

Q. And the columnary headings are exactly the same as those used in defendant's payroll?

A. That is right.

Q. Were the weeks included selected on the same basis which you have testified was the basis for the selection of weeks in Plaintiff's Exhibit 3?

A. Yes.

Miss Williams: I offer Plaintiff's Exhibit 3-A for identification in evidence.

Mr. Sandmeyer: To which we object upon all of the grounds stated as grounds for the objection to Plaintiff's Exhibit 3.

The Court: The objection is over-ruled. The exhibit will be received in evidence. [41]

The Clerk: Plaintiff's Exhibit 3-A for identification in evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 3-A, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 3-A

SCHEDULE I-A—PAYROLL PERIODS IN WHICH GUARANTEE WAS PAID FOR WORKWEEKS IN WHICH NO OVERTIME WAS WORKED

Payroll Period	Name and Occupation	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total Hours Worked	Hours Worked		Hourly Rate	Extension	Total	Guar. Wkly. Rate	Add'l Comp. per Guar.	Weekly Earnings	Amount
Jan. 30 to Feb. 12 1944	Graham, W. J. Bulk-cement driver									OT	0							
		DO	DO	7	9	1½	DO	8	25½	RT	25½	.43	10.97	10.97	46.15	35.18	46.15	
										OT	28½	.655	18.67					
		6½	8½	15	DO	2½	18½	17½	68½	RT	40	.43	17.20	35.87	46.15	10.28	46.15	92.30
	Parker, C. A. Tester									OT	0							
		10	12	DO	DO	DO	DO	9	31	RT	31	.59	18.29	18.29	63.46	45.17	63.46	
										OT	31	.905	28.06					
		DO	9	15	16	9	9	13	71	RT	40	.59	23.60	51.66	63.46	11.80	63.46	126.92
										OT	75	.905	67.88					
	Perkins, R. W. Cementer									OT	0							
		19	22½	15	14½	14½	15½	14	115	RT	40	.59	23.60	91.48	63.46	....	91.48	
		12½	DO	9	DO	DO	8	8	37½	RT	37½	.59	22.13	22.13	63.46	41.33	63.46	154.94
										OT	0							
Feb. 13-26 1944	Allred, J. T. Cement driver	DO	DO	DO	8	8	11	12	39	RT	39	.43	16.77	16.77	46.15	29.38	46.15	
										OT	41	.655	26.86					
		13	11	8	8	8	15	18	81	RT	40	.43	17.20	44.06	46.15	2.09	46.15	92.30
	Booth, J. A. Bulk-cement driver									OT	0							
				7	7½	7½	7½	5	34½	RT	34½	.38	13.11	13.11	40.38	27.27	40.38	
		DO	DO	3½	8½	4	8	8	32	RT	32	.38	12.16	12.16	40.38	28.22	40.38	80.76
										OT	0							
	Cross, C. R. Tester	DO	DO	DO	13	9	8	7	37	RT	37	.59	21.83	21.83	63.46	41.63	63.46	
										OT	8	.905	7.24					
		DO	8	8	15	DO	9	8	48	RT	40	.59	23.60	30.84	63.46	32.62	63.46	126.92
										OT	27	.78	21.06					
	Fredenburg, J. L. Field Mechanic	DO	DO	8	10	13	18	18	67	RT	40	.51	20.40	41.46	54.81	13.35	54.81	
										OT	0							
		DO	DO	8	9	3	3	DO	23	RT	23	.51	11.73	11.73	54.81	43.08	54.81	109.62
	Graham, W. J. Bulk-cement driver									OT	0							
		DO	DO	8½	DO	8	8	11	35½	RT	35½	.43	15.27	15.27	46.15	30.88	46.15	
										OT	12½	.655	8.19					
		DO	4½	3	11½	4	11½	18	52½	RT	40	.43	17.20	25.39	46.15	20.76	46.15	92.30
										OT	15	.655	9.83					
	Green, LeRoy Cement-driver	DO	7	13	10	3	13	9	55	RT	40	.43	17.20	27.03	46.15	19.12	46.15	
										OT	0							
		DO	10	6	10	1	7	DO	34	RT	34	.43	14.62	14.62	46.15	31.53	46.15	92.30
										OT	8	.74	5.92					
	Hawes, M. T. Cementer	7	7	11	11	5	7	DO	48	RT	40	.48	19.20	25.12	51.92	26.80	51.92	
										OT	0							
		DO	4	4	11	8	5	8	40	RT	40	.48	19.20	19.20	51.92	32.72	51.92	103.84
										OT	0							

Green, LeRoy									OT	15	.655	9.83						
Cement-driver	DO	7	13	10	3	13	9	55	RT	40	.43	17.20	27.03	46.15	19.12	46.15		
									OT	0								
	DO	10	6	10	1	7	DO	34	RT	34	.43	14.62	14.62	46.15	31.53	46.15	92.30	
Hawes, M. T.									OT	8	.74	5.92						
Cementer	7	7	11	11	5	7	DO	48	RT	40	.48	19.20	25.12	51.92	26.80	51.92		
									OT	0								
	DO	4	4	11	8	5	8	40	RT	40	.48	19.20	19.20	51.92	32.72	51.92	103.84	
Nichols, R. C.									OT	0								
Electrical-survey driver	4	3	3	3	5½	6½	7	32	RT	32	.35	11.20	11.20	38.08	26.88	38.08		
									OT	1	.555	.56						
	DO	8	6	6½	5½	4½	10½	41	RT	40	.35	14.56*	14.56*	38.08	23.52	38.08	76.16	
Patterson, T. L.									OT	82	.64	52.48						
Bulk-cement driver	20	19	21	21	21	20	DO	122	RT	40	.42	16.80	69.28	45.00	....	69.28		
									OT	0								
	DO	DO	DO	DO	8	16	14	38	RT	38	.42	15.96	15.96	45.00	29.04	45.00	114.28	

* Apparently Clerical Error.

Plaintiff's Exhibit No. 3-A—(Continued)

Schedule I-A—Payroll Period in Which Guarantee Was Paid for Workweeks in Which No Overtime Was Worked—(Continued)

Payroll Period	Name and Occupation	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Worked Total Hours	Hours Worked		Hourly Rate	Extension	Total	Guar. Wkly. Rate	Add'l Comp. per Guar.	Weekly Earnings	Amount
Feb. 13-26 1944	Rhoades, B. H., Jr. Cement driver	DO	7	11	11	5	7	DO	41	OT	1	.605	.61					
										RT	40	.40	16.00	16.61	42.69	26.08	42.69	
										OT	0							
		DO	4	4	11	8	5	8	40	RT	40	.40	16.00	16.00	42.69	26.69	42.69	85.38
	Roe, T. O.									OT	24	.905	21.72					
	Tester	13	10	8	14	12	7	DO	64	RT	40	.59	23.60	45.32	63.46	18.14	63.46	
										OT	0							
		DO	6	5	6	6	DO	9	32	RT	32	.59	18.88	18.88	63.46	44.58	63.46	126.92
	Sutherland, L. C.									OT	16	.74	11.84					
	Electrical-survey operator	8	8	8	8	8	8	8	56	RT	40	.48	19.20	31.04	51.92	20.88	51.92	
										OT	0							
		4	DO	DO	DO	0	0	0	4	RT	4	.48	1.92	1.92	51.92	50.00	51.92	103.84
	Weaver, F. L.									OT	28	.905	25.34					
	Cementer	5	7	13	10	8	12	13	68	RT	40	.59	23.60	48.94	63.46	14.52	63.46	
										OT	0	.905						
		DO	9	6	DO	6	7	8	36	RT	36	.59	21.24	21.24	63.46	42.22	63.46	126.92
Feb. 27 to Mar. 11 1944	Barfield, W. G.									OT	20½	.93	19.07					
	Electrical-survey operator	4	DO	12	10½	4	22	8	60½	RT	40	.62	24.80	43.87	65.77	21.90	65.77	
										OT	0							
		2	DO	6	8	22	DO	DO	38	RT	38	.62	23.56	23.56	65.77	42.21	65.77	131.54
	Bowen, Babe									OT	22½	.605	13.61					
	Bulk-cement driver	4½	7	5	17½	15	5	8½	62½	RT	40	.40	16.00	29.61	42.69	13.08	42.69	
										OT	0	.605						
		DO	7	DO	DO	6	4	DO	17	RT	17	.40	6.80	6.80	42.69	35.89	42.69	85.38
	Combs, Alfred									OT	0							
	Cementer	DO	DO	DO	8	12	10	10	40	RT	40	.59	23.60	23.60	63.46	39.86	63.46	
										OT	39	.905	35.30					
		10	8	10	10	9	15	17	79	RT	40	.59	23.60	58.90	63.46	4.56	63.46	126.92
	Green, LeRoy									OT	0							
	Cement-driver	DO	DO	8	8	8	8	8	40	RT	40	.43	17.20	17.20	46.15	28.95	46.15	
										OT	30	.655	19.65					
		DO	9	6	15	19	21	DO	70	RT	40	.43	17.20	36.85	46.15	9.30	46.15	92.30
	Nichols, R. C.									OT	0							
	Electrical-survey-driver	DO	2	12	3½	4½	4½	DO	26½	RT	26½	.35	9.28	9.28	38.08	28.80	38.08	
										OT	0							
		5	DO	7½	6	13	5	3	39½	RT	39½	.35	13.83	13.83	38.08	24.25	38.08	76.16
	Parker, C. A.									OT	0							
	Tester	9	9	9	9	DO	DO	DO	36	RT	36	.59	21.24	21.24	63.46	42.22	63.46	
										OT	18	.905	16.29					
		DO	9	9	9	9	13	9	58	RT	40	.59	23.60	39.89	63.46	23.57	63.46	126.92
	Wendorff, R. A.									OT	50	.93	46.50					
	Cementer	8	23	11	18	15	8	7	90	RT	40	.62	24.80	71.30	65.77	....	71.30	
										OT	0							
		13	7	DO	DO	DO	9	7	36	RT	36	.62	22.32	22.32	65.77	43.45	65.77	137.07

(Testimony of Bertha Morse.)

Miss Williams: May this exhibit be marked as Plaintiff's Exhibit 4 for identification?

The Clerk: Plaintiff's Exhibit 4 for identification.

(The document referred to was marked as Plaintiff's Exhibit 4 for identification.)

By Miss Williams:

Q. Miss Morse, I hand you Plaintiff's Exhibit 4 for identification and ask you if you prepared that? A. Yes I did.

Q. Did you also prepare it from defendant's payroll? A. Yes.

Q. Do the columnary headings have the same meaning on that exhibit that they do on Exhibit 3 in evidence? A. Yes, just the same.

Q. Was the data transcribed from defendant's records in the way in which you have described transcribing the data for Plaintiff's Exhibit 3?

A. Yes, in the same manner.

Q. On what basis was the selection made of the weeks included in this exhibit, Miss Morse?

A. This payemnt was made on a daily basis.

Q. In having this exhibit marked I neglected to state [42] for the record that the exhibit is entitled "Pay Roll Period in which Compensation was at a daily rate, pro-rated from guarantee."

I offer this in evidence as Plaintiff's Exhibit 4.

Mr. Sandmeyer: May I examine the witness on voir dire?

The Court: Yes.

(Testimony of Bertha Morse.)

Voir Dire Examination

By Mr. Sandmeyer:

Q. Miss Morse, how did you select the weeks that appear on Plaintiff's Exhibit 4 for identification?

A. In this case I took the entire pay roll period in which the basis of payment was the daily rate.

Q. I notice the heading says "At Daily Rates Prorated from Guarantee." Is that what you mean? A. Yes, that is right.

Q. Now, each of the weeks shown on that schedule——

The Court: Would that be one-sixth of the guarantee for the week?

Miss Williams: One-seventh.

The Court: There is one day that is out.

The Witness: It was taken on the basis of the semi-monthly rate, rather than the weekly.

By Mr. Sandmeyer:

Q. That schedule would show a whole pay roll period of a half a month; would it not? [43]

A. Yes.

Q. Within that half a month pay roll period there is time worked either less than a whole week or less than the full half month?

A. That is right.

Q. Does that include work for the semi-monthly period in which an employee was first employed some time after the first or the fifteenth of the month?

(Testimony of Bertha Morse.)

A. Some of the instances here are what you described, yes.

Q. There are other instances in which the employee terminated his employment prior to the fifteenth of the month or prior to the last day of the month? A. Those also are included here.

Q. There are a few, I assume, where for some reason or other, as for instance, a voluntary lay off where the employee did not work all of the days in the week? A. Yes.

This schedule includes all periods for which employees were, shall we say, docked for some days that they worked, or were paid less than the full amount.

Q. The heading on that schedule which says, "Pay Roll Period in which Compensation was at a daily Rate Pro-rated from Guarantee", the amounts actually paid the employee was always at least the fraction of the number of days worked in the pay roll period, and the number over the [44] number of days in the pay roll period; that fraction of the guaranteed weekly rate in the ocntract?

A. That is what it would amount to.

Q. That is, they are paid at least that much?

A. It was actually a fraction of the days worked to the days in the pay roll period, and that computation was made against the semi-monthly rate.

Q. Which is the equivalent of the weekly guarantee? A. That is right.

Q. That is, if a man worked six days in the semi-monthly period, the first half, he was paid

(Testimony of Bertha Morse.)

six-fifteenths of the semi-monthly equivalent of the weekly guarantee? A. Yes, that is right.

Q. That is, at least that much. And in some instances if he worked any hours over time in excess of the hours which his weekly guarantee would pay him, he was paid for those hours at one and one-half times the hourly rates specified in the contract? A. Yes, that is right.

Q. You testified that you have been an inspector for the Wage and Hour Division for a year and a half. That you had some experience in computing pay roll periods for the purpose of determining whether or not the employer had complied with the Fair Labor Standards Act?

A. Yes, indeed.

Q. That is how you spend most of your time?

[45]

A. That is right.

Q. Whatever system may be in use, the regular work week plan, or any other, what are the instructions of the Administrator, if any, which prescribes for the payment of a portion of a pay period?

Miss Williams: If your Honor please, I am going to object to that as going outside the scope of the direct examination and not being material to the issues in this case.

Mr. Sandmeyer: I think it is very material, your Honor. I assume the schedule is to show something.

I intend to object upon the ground it shows nothing that would even tend to show a violation of

(Testimony of Bertha Morse.)

the Act. I haven't come to that yet. For the purpose of laying a foundation for that objection I should be enabled to see upon what basis this was computed, how it could possibly show anything that would or could be a violation.

Miss Williams: If your Honor please, the testimony was this witness has made no computations. She has simply copied the defendant's records, taken excerpts from their records. She has made no computation whatsoever. Therefore she didn't apply any instructions from the Administrator in making computations. Therefore, I think it is outside the scope of the direct examination.

The Court: I have admitted these government exhibits over the objection of the defendant. I feel we should get [46] all the information we can. It is a very important issue.

This witness testified she is an inspector. I assume that carries with it a higher degree of competency than just someone going in and copying records, and saying, "This is what I found, I do not know what they mean. There they are."

Miss Williams: I agree. We certainly have no objection to disclosing fully our theory in this case and all the evidence we collected. However, inasmuch as the witness made no computations in this case any answer she gives to a question as to what instructions she would apply in making computations is hypothetical. I think that it isn't the kind of question that should be put to the witness. She is not in a position to answer hypothetical questions

(Testimony of Bertha Morse.)

of that character, as to what kind of computations she would make in a case not before the court.

Mr. Sandmeyer: We are going to ask what kind she was going to make in this case.

Miss Williams: She wasn't going to make any computations in this case.

Mr. Sandmeyer: I mean we are going to ask her how she would compute them. She, being an expert, spent a year and a half computing and determining whether or not the employer has complied with their theory of the Fair Labor Standards Act.

Miss Williams: How she would compute the regular rate [47] of pay?

Mr. Sandmeyer: We will come to the question. We are going to have her to do some computing on partial work weeks.

The Court: I think the government's objection is good as to some other case. I think anything with reference to this case I am going to permit. You will have to reframe the question, Mr. Sandmeyer.

Mr. Sandmeyer: I have forgotten what it is.

The Court: In her experience had she had experience in other cases of making these computations. I don't think that is material.

This witness was presented records as an inspector of the Wage and Hour Bureau, and I think we can get as much information as we can. She is a very intelligent and experienced representative of that Bureau.

(Testimony of Bertha Morse.)

Q. By Mr. Sandmeyer: Miss Morse, the decision of the United States Supreme Court in the case of Walling vs. Belo Corporation was rendered in June of 1940.

Mr. Bertram: 1942.

Mr. Sandmeyer: That is right. Thank you.

Q. By Mr. Sandmeyer: Since that time, to your knowledge, has the Administrator issued any interpretive bulletins or instructions or releases pertaining to the computations of pay, particularly for partial work weeks where a Belo type contract is in use? [48]

A. I don't quite understand your question, as to what you mean by a Belo type contract.

The Court: I understand that. It is a contract where the employees are guaranteed a certain amount which is not required by the Fair Labor Standards Act, whether they work or not they are given a guarantee. The employer will pay them so much money whether he calls on their services or not. That is not required by the Fair Labor Standards Act. I think that is the essence of the question.

Mr. Sandmeyer: It is a little more than that. I will explain what I mean by the Belo type contract. That is a contract, particularly written contract—not necessarily so, as I understand it—whereby it is agreed between the employee and the employer that he is employed at a specified rate per hour, which is called his regular basic rate for all hours up to 40 hours and for all hours in excess of 40 hours at a rate of one and one-half times

(Testimony of Bertha Morse.)

the basic straight time, with a provision that within any work week for all straight time and overtime hours worked everybody receives not less than a specified amount per week. That is what I am defining as a Belo type contract.

The Witness: Now, what was your question about that?

Mr. Sandmeyer: May we have the question read?

The Court: Has there been any interpretation issued by the Wage and Hour Administrator with reference to those kind of contracts, or instructions? That is the question. [49]

The Witness: I don't know of any.

Q. By Mr. Sandmeyer: You are familiar with interpretive bulletin No. 4; are you not?

A. Yes.

Q. It was issued by the Administrator?

A. Yes.

Q. It gives instructions with respect to payment under the so-called irregular work week plan?

A. Yes.

Q. And the time off plan. A. Yes.

Q. And the pre-paymnet plan. A. Yes.

Q. But so far as you know the Administrator has not issued any instructions relative to what I have described as the Belo type contract?

A. I don't know of them. They may have been issued.

Q. I say, as far as you know. A. Yes.

Q. To your knowledge has there been any interpretive bulletins or instructions or releases by the

(Testimony of Bertha Morse.)

Administrator of the Wage and Hour Division with respect to the payment of a partial work week under the irregular work week plan? That is, where there is a monthly salary, for instance, and fluctuating hours.

Miss Williams: I don't think that question is very clear, [50] your Honor.

Mr. Sandmeyer: Well, I will ask the witness.

Q. By Mr. Sandmeyer: Do you understand the question?

A. No, I am sorry, I don't quite understand it. I don't know what you mean by a "partial work week".

Q. Just a moment. I will give you an example. Assume that the employer and employee have adopted the irregular work week plan, where the employee is being compensated for all hours worked up to 40 and beyond at straight time. That is what you understand by the irregular work week plan?

A. That is right.

Q. And suppose that the employee quits on the 10th day of the month, he severs his connection with the company, have there been any instructions or interpretive bulletins or releases from the Administrator giving his idea as to how to compute that person's compensation for the first ten days of the month?

A. As I understand the Wage and Hour law it is predicated upon a work week and not upon a month.

(Testimony of Bertha Morse.)

Q. Under the irregular work week plan, which I am assuming, the employer pays a month's salary which pays for all hours worked in that month at straight time; doesn't he? That is the plan, isn't it?

A. That might be the plan, but the application of it would necessarily assign a weekly amount to each week's work, rather than on the monthly basis. [51]

Q. You do that on translation just the opposite of what the defendant in this case did; do you not? That is, in that case actually the agreement between the employee and the employer is that he is to be paid, say, $150.00 for a month's work, which would cover all hours worked at straight time, no matter how many hours there are? Is that the idea? A. Yes.

Q. Then as far as computing what his weekly rate is you would multiply the monthly salary by 12 and divide it by 52? A. That is right.

Q. That would give you some figure which you designate as the weekly pay.

A. That is right.

Q. Or wage? A. That is right.

Q. Now, assuming that his employment terminated on the 10th day of the month, which was the third day in the week of the second week of that month, my question is have there been any instructions or interpretive bulletins issued by the Administrator defining how that computation should be made? A. Not that I know of.

(Testimony of Bertha Morse.)

Q. Not that you know of. You have had experience in computing the records, or, that is, the compensation of employees. Have you ever run across weeks where that happened like that? [52]

A. I don't recall especially whether I have or not. A fluctuating work week is not one we run into very often.

Q. But you have computed them, I assume.

A. I suppose.

Q. Can you tell us how you would compute such a case? That is, how would you go about it, the principles you would apply?

A. To that broken final work week?

Q. Yes.

A. That is a hypothetical case and I probably should use the average hourly rate of pay that might have been derived for the previous full weeks.

The Court: That is the only way you could do it, is it not, counsel? You would have to take the average hourly pay for the week previous and then——

Mr. Sandmeyer: I don't think so.

The Court: How would you do it?

Mr. Sandmeyer: I will ask the witness.

Q. By Mr. Sandmeyer: Wouldn't a proper method be that you have figured by taking the monthly salary and multiplying it by 12 and dividing by 52 you will get a certain figure which you take to be the weekly wage? A. Yes.

(Testimony of Bertha Morse.)

The Court: That is correct. You could not get away from that.

Mr. Sandmeyer: All right [53]

Q. By Mr. Sandmeyer: Then if he worked three days of the second week a proper way would be to take 3/7ths of that weekly wage as being the compensation at straight time? A. No.

Miss Williams: If your Honor please, I object to that, because, of course, the witness wouldn't even concern herself with this unless he worked hours over 40. This case is not only hypothetical but is a matter in which the witness wouldn't concern herself unless the employee works over 40 hours.

Assuming he earns more than the minimum wage, the Wage and Hour inspectors are not concerned with how he is paid when he works the minimum rate.

Mr. Sandmeyer: That is very interesting. That is what the schedule purports to show, the schedule No. 1, where he didn't work over 40 hours; he worked 40 or less. Yet the Administrator seems to be quite concerned about the defendant's situation.

Miss Williams: That, of course, is offered for an entirely different purpose, to show the intent of the parties and the way in which they applied their contract. These are not computations of wages due or the kind of computations the Wage and Hour inspectors would make. They wouldn't use this method. This witness simply copied the

(Testimony of Bertha Morse.)

defendant's payroll. The reason we are putting them in evidence, as I thought I made clear, is to show how the [54] defendant interpreted and applied its contract; not at all how computations should have been made under the Fair Labor Standards Act. In many of the weeks no overtime was worked, no overtime was due. This is merely offered to show the intent of the parties and what they meant by this contract and whether they meant a weekly salary or rate.

The Court: I think the question is proper and I think anything that is introduced into evidence on cross examination counsel is entitled to develop, whatever the theory is. You may proceed.

An exception is allowed the government.

(The record was read.)

Q. By Mr. Sandmeyer: You say you would not take 3/7ths of the weekly wage as being straight time compensation for all hours worked in those three days. A. No, I wouldn't.

Q. Can you explain why not?

A. Because, as I see it, that has nothing to do with the way the Fair Labor Standards Act is written. It is on the basis of a 40-hour week. It is the hours with which we are concerned, rather than the days that are worked. The days have no application.

Q. Under the regular work week plan the wage, whether it is the monthly or reduced down to the weekly, is the wage for that week, irrespective, for the hours worked at straight time. [55]

(Testimony of Bertha Morse.)

The Court: That is, the 40 hours?

Mr. Sandmeyer: No, for all hours of straight time under this other system.

The Court: Oh, yes.

Mr. Sandmeyer: May I explain that? If a person, as I understand it, is working these fluctuating hours and he get $40.00 a week, reduced down from his monthly salary, that $40.00 pays at straight time for all hours worked even up to a hundred. If he works 50 hours that means he is getting 80 cents per hour. If he works a hundred the next week he only gets 40 cents an hour for the second week. So you take each week by itself and divide the total hours worked into the weekly wage to find out what his rate is for that week.

Q. By Mr. Sandmeyer: Isn't that your understanding? A. That is right.

Q. So when you compute a particular week, under the regular work week plan, you pay no attention to what his rate was the previous week; do you? A. That is right.

Q. So if you took a portion of a week, why shouldn't you figure that portion by itself without reference to the prior week?

A. I suppose you could.

Q. All right. Let's take the portion of the week, say, the three days, and for the straight time you could take as his compensation 3/7ths of the weekly wage. [56]

A. No, Mr. Sandmeyer, there is no daily basis that I would use in making any computation. I

(Testimony of Bertha Morse.)

would figure the number of hours the man worked each day and consider only that.

Q. Supposing he worked no hours during those three days?

A. Then he would be entitled to no pay.

Q. He would get nothing. Yet the employer agreed with him that for 30 days, whether he worked or not, he would get, say, $150.00. That is, whether the man worked or not. Just so he was available for work.

How do you reconcile that with your saying you would pay him only on the hours actually worked and if he worked no hours during the three days you would pay him nothing.

A. I as an inspector am certainly not concerned to see that the man is paid for hours he doesn't work.

Miss Williams: Mr. Sandmeyer, do you mean what he is entitled to under the Act or entitled to under the contract? I think he is asking his question relative to under the contract and she is answering under the Act.

The Court: I think it is very clear that is the distinction. In other words, the witness is answering under the Act and Mr. Sandmeyer is developing it under the theory of a monthly wage, whether he worked or not. That is, so to speak, a matter entirely with the employer, if he desires to give the workman compensation for time he [57] does not work, which he is not required to do under the

(Testimony of Bertha Morse.)

Act. Is not that the distinction the witness is trying to point out?

Mr. Sandmeyer: Not in my opinion, your Honor, for this reason: There are many, many instances where the employer will hire a man by the month, and the Administrator in his Bulletin No. 4 says that is fine. That monthly salary, which we may say is $150.00, pays the employee for all time spent during that month at straight time.

Therefore, if during a month of 30 days he works the full month, and there are three days in which he does not work, the employer is obligated to pay him at least $150.00.

The Court: That is right. I understand that.

Mr. Sandmeyer: If he didn't do it I think the Administrator would say clearly he had been under paid.

The Court: I think so, too.

Mr. Sandmeyer: I am just taking that situation. And assuming he quits after three days, in a particular work week and he did not do any work. I am really testing the witness' answer as to whether he would get no pay or not. Let me ask the witness this:

Q. By Mr. Sandmeyer: Assuming an employee, employed on a monthly salary at $150.00 a month, in a month of 30 days, he works the full month, that is, he is there for the full month, but there are three work days in which he did no work whatever, would you deduct 3/30ths of his monthly [58] salary or would you pay him for those three days?

(Testimony of Bertha Morse.)

Miss Williams: Will you explain whether you are saying under the Act?

Mr. Sandmeyer: I am saying under the contract, within the approval of the Act.

Miss Williams: But the Act hasn't anything to do with situation.

Mr. Sandmeyer: I am trying to find out how she would compute the pay. We have a contract, too. We have to live up to it. I am trying to find out how we should compute this thing.

Miss Williams: Your Honor, I feel hesitant to make objections because I realize that your Honor wants this developed; so do we. I think the witness is having a little difficulty here. If Mr. Sandmeyer made it clear or the witness understood she is being questioned about what she would do in her capacity under the Fair Labor Standards Act, that is different. She wouldn't be concerned with what an employer paid except insofar as he is required to pay under the Fair Labor Standards Act. That is, what he paid for overtime hours. I think the witness is being misled—not intentionally—by Mr. Sandmeyer. He is asking her what should be paid under the contract. With that she has no concern.

The Court: She has not? As Mr. Sandmeyer said, suppose that contract was that the working man should be paid $200.00 a month, or all of the employees should be paid $200.00 a month—let's make it general and it will make it simple—and they had only worked two weeks during the month, so at the end of the month the employer tenders

(Testimony of Bertha Morse.)

them $100.00 for the two weeks. I am inclined to believe that the Administrator of the Wage and Hour Act would say you owe them $200.00.

Miss Williams: No, your Honor. The Administrator wouldn't say anything unless those employees had worked hours over 40. Then he would say for each week they worked hours over 40 they must be paid in a certain way.

The witness is willing and ready to testify to that. To the other matters the Administrator wouldn't make any answer at all, that wouldn't be under the Act. His authority is only that of seeing they are paid the minimum, that is, in excess of the minimum. We wouldn't be concerned with what they are paid overtime on their regular rate of pay on the hours over 40. He would have to determine what the regular rate of pay was and to see for each week the employee received for the total hours worked time and one-half his regular rate of pay for all hours in excess of 40.

The witness can testify exactly as to how those computations were made. The Administrator wouldnt' be concerned with whether he got $200.00 if he didn't work over 40 hours. It would be outside the scope of the Administrator's authority. [60]

Mr. Sandmeyer: May we have a stipulation, Miss Williams, that it is provided if the employee receives pay at least above the minimum it is no concern of the Administrator what he is paid, if the employer makes a contract to pay him a sum

(Testimony of Bertha Morse.)

at least equal to the minimum where the hours do not exceed 40?

Miss Williams: No, because in the case we have here we have a concern in this sense: We have the concern in that we have to determine at what rate the person is actually employed. Now, you assumed that fact in putting the question to the witness. You assumed the employee was employed at $200.00 a month.

The Court: $150.00. I put the $200.00.

Miss Williams: Excuse me, $150.00.

The Court: It sounded better to me.

Mr. Sandmeyer: The court has just increased it.

Miss Williams: Yes, sir. There is the fact which is really an issue in this case. The question is is he employed at any amount per month or is he employed at any amount per hour. We have, of course, to concern ourselves in a sense with matters you have suggested in your stipulation, Mr. Sandmeyer, where we are concerned, what he really is employed at. At what rate is he employed? But my remarks were addressed to the case you put which was a man is employed at $150.00 a month.

I would like to assume further that the hours he works [61] are such his wage would certainly exceed the minimum.

Mr. Sandmeyer: I think I can ask, Miss Williams, a couple of questions which will make her recede from her position. You say it is purely a matter of contract between the employer and the employee whether he is paid for those three days

(Testimony of Bertha Morse.)

or not. If the employer made a practice of hiring them by so much a month, $150.00, or at the court's figure of $200.00 per month, and then he made a practice of docking them for every hour, for every day in which there was no work to do, though the employee was ready to do it, and paid him the lesser amount, wouldn't you necessarily have to take that into consideration to determine what his regular rate of pay was?

Miss Williams: I think we would say that suggested he was not employed at so much per month, but so much per hour.

Mr. Sandmeyer: How would you figure the hour if the employer didn't pay him for the days he didn't work? Sometimes he did and sometimes he didn't. How would you find out what his regular rate of pay was? You wouldn't know how much he was going to get paid.

Miss Williams: Your Honor, I think one of the differences between us here is this: We use regular rate of pay in a very strict sense, which we understand is the sense the Supreme Court and other courts used. It is the sense in which it is used in Section 7(a) of the Fair Labor Standards Act. [62]

The court said in the Missel case where an employee is employed at an hourly rate. That is the point at issue here. Let's assume we knew and we are all agreed he is employed at an hourly rate, that is his regular rate within the meaning of Section 7(a). Assuming a different thing, that the employee is not employed at an hourly rate

(Testimony of Bertha Morse.)

but at a monthly salary; that that monthly salary has to first be translated into weekly terms, being multiplied by 12 and divided by 52, and the weekly salary has to be translated into hourly terms.

Now, as the bulletin says, and as the Supreme Court has stated in the Missel case, if an employee is employed for a regular work week for a salary we translate, or the Administrator is told by the courts to translate his weekly salary or his monthly salary, which has been translated to weekly terms, to translate that into hourly terms by dividing the weekly salary by the number of hours which he has agreed to work, that is, the number of regular hours worked during the regular week.

Now, if, in fact, he is not on a regular work week, he doesn't work, let's say, 45 hours every week or 48 or 50 hours every week, but instead he works a certain number one week and a different number the next week, the court says that is an irregular work week. He was not employed for a regular number of hours per week. There the regular rate of pay, within the meaning of Section 7(a), means his average hourly pay is going to vary from week to week. [63] Each week you divide the weekly salary by the number of hours worked which gives his regular rate of pay for that week.

Now, as I say, the regular rate of pay means either the hourly rate which he is employed at, or if he is employed at a rate other than the hourly rate, a salary, and the salary translated into hourly

(Testimony of Bertha Morse.)

terms. The question is is he employed at an hourly rate or is he employed at a salary? If the court should find these employees are truly and actually employed at hourly rates, then the hourly rate would be the regular rate within the meaning of the Fair Labor Standards Act.

On the other hand, if the court should find they are not employed at an hourly rate, but weekly or monthly salaries, then his regular rate within the meaning of Section 7(a) of the Act would be that weekly or monthly salary translated into hourly terms.

The Court: The minimum hours of the Wage Act; would that be?

Miss Williams: Sir?

The Court: The minimum hours of the Wage Act.

Miss Williams: No. Divided by the number of hours actually worked within the week, because these employees appear to be really on a fluctuating hour week. Our theory is they are employed at weekly or monthly salaries, not at the hourly rate shown in the contract.

I think there is no dispute about this. The authorities [64] are all to the effect that if they are all employed at weekly and monthly salaries then the regular rate of wage within the meaning of Section 7(a) is the salary divided by the number of hours they work a week.

The Supreme Court said in the Missel case that the rate wasn't regular because it was different

(Testimony of Bertha Morse.)

for each week. It was regular for every hour within the week, you see. Now, we would say that employee, therefore, was entitled to his weekly salary and in addition thereto to one-half that regular rate so computed, as I have suggested, times all the hours worked over 40 in that particular week; and we would do it week by week.

The Court: All right. Mr. Sandmeyer, you have the position of the government.

Q. By Mr. Sandmeyer: Showing you Plaintiff's Exhibit 4 for identification, page 3, and under the work week of February 16th to 28th, 1943, there is a name of an employee, A. A. Scott, bulk cement driver, and it shows a work week where he first worked on Tuesday and worked Tuesday, Wednesday, Thursday, Friday and Saturday, and the next Sunday. You are familiar with the records of Halliburton and know what is their work week; do you not? A. That is right, yes.

Q. It begins Sunday.

A. And is the calendar week.

Q. Yes. So he worked in that instance five days in [65] the first week and one day in the second.

A. That is right.

Q. Now, the monthly equivalent of his guarantee was $150.00. Assuming that he was on an irregular work week plan of salary at $150.00, to pay him for all hours worked at straight time, irrespective of the number of hours, how would you compute that man's pay for that payroll period?

A. At this time his pay could be computed for

(Testimony of Bertha Morse.)

the first week that he has worked. The second week has not yet been worked. And the rate cannot at this time be determined.

Q. He worked eight hours the first day of the second week. You will have to pay him something for that.

A. You don't have to pay him right at that point.

Q. He quit on Sunday, he quit the company, how are they going to give him his final check?

A. Now, again, are you getting into a contract or are you getting into the rate?

Q. We agreed to pay him $150.00 a month, to pay him for straight time of all hours worked. That is all the agreement is.

A. Inasmuch as he worked only eight hours for the week there is no question of overtime. If he has been working on fluctuating work weeks his rate has probably changed from week to week. There is no standard there. If he were paid more than the statutory minimum I should make no objection to whatever they paid. [66]

Q. No matter whether it was one dollar or a hundred?

A. If it were a hundred I would think it was very suspicious.

Q. So it is some concern of yours. Actually on the hypothesis that he is paid $150.00 per month in a 30-day week——

The Court: Not a 30-day week.

Q. By Mr. Sandmeyer: I mean a 30-day month. Assuming a 30-day month and assuming he was

(Testimony of Bertha Morse.)

subject to call on Sunday, as well as any other day, that would be at the rate of $5.00 per day; wouldn't it?

A. There is no way that I figure a daily rate.

Q. If a man is paid $150.00 for 30 days' work it wouldn't take much computation to say that was at the rate of $5.00 per day.

A. That is entirely contrary to the principle of the Fair Labor Standards Act, as I see it.

Q. It is common sense.

A. I work by the Act not by common sense.

Q. If you were a man——

A. That is quite contrary to my instructions, to use common sense. I have to follow the law.

Q. I appreciate your frankness. So you would have no way of knowing? Suppose they paid him $5.00 a day and that would be eight hours at $5.00, which would be something like 66 cents an hour, you would have no objection [67] to that?

A. No.

Q. Let me ask you this: Have you checked any employers' records where they were on the Belo type contract, as I have described it to you, other than the Halliburton Oil Well Cementing Company? A. No.

Q. You never have checked anyobdy else?

A. No, not that I recall.

Q. You didn't personally check Lane Wells, I take it. A. No.

Q. Or Schlumberger? A. No.

Q. Or any other oil well service company?

(Testimony of Bertha Morse.)

A. None that have any contract of this sort.

Q. Assuming you have read the Belo case,——

A. I have read some of it.

Q. ——you are familiar with Halliburton's contracts; are you not? A. Yes.

Q. Assuming there is no question of the validity of those contracts, that is, that the hourly rates specified in the contracts is the hourly rate, and the weekly guarantee is the weekly guarantee, how would you compute Mr. Scott's compensation for this pay period of February 16th to 28th, 1943, shown on page 3 of Plaintiff's Exhibit 4 for [68] identification?

Miss Williams: Mr. Sandmeyer is asking this witness to assume the question at issue here, whether they are employed at the hourly rate or the weekly guarantee. I don't think it is a proper question.

The Court: I do not believe that is true. He asked how she would make that computation.

Miss Williams: We contend they are not employed at those rates. He is asking her to compute——

The Court: That is all right. He has the right, on cross examination, under the rules of evidence, to make any assumption in his question he cares to. He can assume. That is not evidence or proof of it. It is just an assumption on his part and it doesn't bind the government at all.

Miss Williams: I think assuming the issue in the case puts the witness at quite a disadvantage. I mean I don't think she understands the question.

(Testimony of Bertha Morse.)

The Court: That is different.

Repeat the question carefully, Miss Reporter. I do not want any witness to answer questions that are not clearly understood.

(The question was read.)

Q. By Mr. Sandmeyer: Can you answer that question, Mr. Morse?

A. No, I can't answer that, Mr. Sandmeyer, because [69] I can't reconcile those two figures. I can't reconcile your hourly rate and your guarantee.

Q. Are you familiar enough with this to know whether that $150.00 is the entire month's equivalent of a guarantee?

A. Yes, that is what it would be.

Q. You are also familiar with this payroll chart. That man, according to his contract, his hourly rate of pay, is 33 cents an hour. He is guaranteed that in any full work week. He will be paid for the hours worked a sum not less than $35.77. His overtime rate is placed at 51 cents, being slightly more than one and one-half times his hourly rate of 33 cents an hour.

Now, that is, his hourly rate is 33 cents an hour, with 51 cents for all hours over 40. Now, in that payroll period how would you compute what that man had coming?

A. In that payroll period there is no full work week, as I understand your contract provides for, and if we were to be governed by the hourly rates specified in the contract he would be entitled to

(Testimony of Bertha Morse.)

the hourly rate for the first 40 hours and the overtime hourly rate for the hours in excess of 40.

The Court: If that was less than $35.77 he would be entitled to $35.77? Is it $35.77?

Mr. Sandmeyer: The weekly guarantee was $35.77.

The Court: And his hourly rate was 33 cents.

Mr. Sandmeyer: That is right. [70]

The Court: And 51 cents for all over 40 hours.

Mr. Sandmeyer: Yes. In the first week he worked only five days, and worked 57 hours.

The Witness: You said a full work week.

Mr. Sandmeyer: Just a moment. In the second week he worked only——

The Court: Five days the first week at how many hours?

Mr. Sandmeyer: He put in 57 hours.

The Court: All right. 17 hours over his required amount.

Mr. Sandmeyer: Over the straight time.

The Court: Overtime.

Mr. Sandmeyer: Yes, 17 hours of overtime.

The Court: All right.

Mr. Sandmeyer: And the second week he worked only the first day, and then quit. The first day of the second week he worked eight hours.

Miss Williams: I am not sure this is what that represents.

The Witness: I think it might be best in this case to refer to your payroll before you say he quit on that day.

(Testimony of Bertha Morse.)

Mr. Sandmeyer: He worked no other days except the first day in that second week, or in that payroll period.

Miss Williams: In that payroll, yes, that is right.

Mr. Sandmeyer: The second week of that payroll period.

The Witness: Yes. He may have worked in that week in [71] a subsequent payroll period.

Q. By Mr. Sandmeyer: He may have. But as far as this payroll period is concerned, we have to pay him for that payroll period. The law requires us to pay him. We want to figure out how much he is to get.

Now, assuming also that through months and months of practice the Halliburton Company had always paid for a partial work week and they had so interpreted their contract, that they should pay at least a prorata amount of the weekly guarantee for a partial work week; assume that, also. Now, will you please compute how much this man had coming for that payroll period?

Miss Williams: Mr. Sandmeyer, what were you assuming the rate at which he is employed?

Mr. Sandmeyer: 33 cents an hour. Pardon me. I guess I gave you the wrong figures. It is 32 cents an hour. I am sorry. And a guaranteed weekly amount of $34.62.

Miss Williams: Now, your Honor, that question has a question of law involved in it. Mr. Sandmeyer is assuming what the witness has previously

(Testimony of Bertha Morse.)

testified she would consider a contradiction, and we do, too. Mr. Sandmeyer says assume he is employed at an hourly rate and assume he has the guarantee.

Now, the witness has to resolve the question of law, at which rate he is employed. If Mr. Sandmeyer wants to ask the question of assuming the rate at which he is employed [72] and without assuming the guarantee the witness can answer the question. But she has to apply the law and make a legal determination here to determine which is the rate at which he is employed.

Mr. Sandmeyer: She doesn't on my hypothetical case. I said assuming that the hourly rate specified in the contract was the correct hourly rate and there wasn't any question about it, and there is no question about the weekly guarantee in the contract; it is valid. You canot say there is no such situation because the United States Supreme Court says there can be and there is in the Belo case. That is existing right now in the A. H. Belo Corporation.

Miss Williams: You see, your Honor, that is the question in this case. We say that employee is not employed under those circumstances at that hourly rate.

Now, Mr. Sandmeyer asked the witness to answer the question, assuming that the man is employed at the hourly rate, and also has the guarantee.

We say if he has the guarantee he simply is not employed at the hourly rate. So I say that the

(Testimony of Bertha Morse.)

question is asking the witness to come to the legal conclusion which the court must come to in this case.

Now, if Mr. Sandmeyer wants to ask the question, assuming this witness is employed at the hourly rate, and ask the question that way, and then ask the question again assuming, instead of being employed at the hourly rate, [73] he is employed at the weekly guarantee, the witness can answer the question on those two assumptions. The assumption Mr. Sandmeyer is making involves the witness reaching the determination before the court here at what rate the man is employed. She will have to answer, first, applying the law which the court must apply in this case, to reach that conclusion.

Mr. Sandmeyer: I ask, your Honor, have you read the Belo case recently?

The Court: I read it about a year ago.

Mr. Sandmeyer: I would like to have that case brought out here because Miss Williams says we must assume half of the contract and disregard half of it, disregard the first half and assume the last half. That isn't what the Halliburton Company had to decide. It had the contract written. Miss Williams says there can be no situation where there is a specified hourly wage and no guarantee. The Supreme Court says that there is such a situation in the Belo case. The Belo Company has to decide that every day, to determine when they work only a partial week.

The Supreme Court says such a contract may be

(Testimony of Bertha Morse.)

valid. Certainly, I think the cases have gone so far as to say, under the situation here, where there is no fraud or misrepresentation or duress or coercion there canont be a showing that it is not the regular hourly rate. That was decided in the case of Atlantic vs. Walling in the Circuit Court. [74]

The Court: Mr. Sandmeyer, does it make any difference what a particular investigator would decide on figuring up a payroll under a definite or certain contract? Does it make any difference? Is it not a question for argument, under the law, as to whether or not that complies with it and whether or not it is under the terms of the Belo case?

Mr. Sandmeyer: I think, your Honor, you are correct. They are going to offer this schedule and if it is a pure question of law, then it seems to me the court should now decide, when that is offered, is it a question of law, does that schedule show anything other than that they paid them in accordance with their contract?

The Court: I will never decide a case in the midst of the testimony, Mr. Sandmeyer. Proceed. I think it is a question of law and a question of mathematics. You can figure that out exactly on your basis and see what it comes to and decide whether or not it comes under the terms of the decision of the Supreme Court of the United States in the Belo case or not.

Suppose the witness says, "No, it does not." That

(Testimony of Bertha Morse.)

does not bind this court. If the witness said it did; that does not bind the court. I think we will proceed from there.

Mr. Sandmeyer: I will ask one question.

The Court: It is my suggestion that both sides get the facts. If the basis of the computation as shown by the defendant, how they computed it and their contentions and that [75] meets the issue, then the government has to establish that is not in accordance with the Wage and Hour Act. That is all there is in the case.

Q. By Mr. Sandmeyer: Now, in this Plaihtiff's Exhibit 4 for identification, there are numerous instances where the employee worked a sufficient number of hours in one of the work weeks, in the pay period, so that he was entitled to something in excess of his weekly guarantee?

A. Yes.

Q. This schedule shows he was paid for those excess hours at one and one-half times the hourly rate specified in that employee's written contract?

A. It is at the overtime rate in the schedule.

Q. Which is at least one and one-half times the hourly rate specified in the contract as the hourly rate? A. Yes.

Q. In the other weeks shown in here the employee worked less than a full week and the hours worked at his hourly rate, at straight time for the first 40 hours and one and one-half times that amount for hours over 40, did not equal a prorata or proportionate share of the weekly guarantee?

(Testimony of Bertha Morse.)

A. I didn't follow you.

Mr. Sandmeyer: Read the question.

(The question was read.)

The Witness: I didn't make that computation.

Q. By Mr. Sandmeyer: You did not see whether or not [76] the hours worked in the partial work week, computed at the hourly rate specified in the contract for the first 40 hours and at one and one-half times that amount for hours over 40 would equal or exceed the prorated portion of the weekly guarantee?

A. No, I didn't check that.

Q. You don't know whether it does or doesn't?

The Court: She did not check it. She does not know.

Mr. Sandmeyer: That is right. We object to the proposed offer of Plaintiff's Exhibit 4 for identification upon the grounds that it is immaterial and has no probative force or effect, nor does it tend to prove any violation of the Fair Labor Standards Act in any respect. It only shows that the defendant paid its employees for a partial work week, in amounts in accordance with its contract.

The Court: The motion will be overruled. The exhibit will be received in evidence. An exception will be allowed to the defendant.

The Clerk: Plaintiff's Exhibit 4 in evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 4, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 4

PAYROLL PERIODS IN WHICH COMPENSATION WAS AT DAILY RATES PRO-RATED FROM GUARANTEE

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Aug. 16-31 1942	Borden, L. L. Cement-Driver	0			0	0	0	0	0	0	0		(7 days @ 4.69)	.00	
			0	0						0	0		150.00	32.83	32.83
	Franzan, E. R. Bulk-cement Driver	0					7½	11½	11	29½	0		(12 days @ 4.69)		
			4	8	7	16½	19½	8½	11	74½	0			.00	
			4	17						21	0		150.00	56.28	56.28
	Knott, L. A. Cement Driver	0			0	0	0	0	0	0	0		(7 days @ 4.69)	.00	
			11	13						24	0		150.00	32.83	32.83
Sept. 1-15 1942	Barnett, J. E. Well-logging Driver	0	V	0	V 0	V L	V L	V L	V L	0 0	0 0		(10 days @ 5.50)	.00	
			L	8	8					16	0		165.00	55.00	55.00
Sept. 16-30 1942	Davis, R. E. Bulk-cement Driver	0		8	8	7	9	8	9	49	0		(10 days @ 5.00)	.00	
			16	20	15	10				61	0		150.00	50.00	50.00
	Laquey, T. H. Cement Driver	0	8	13	14	12	14	0 18	0 11½	0 90½	0 6½	3.22	(9 days @ 5.00)	3.22	
													150.00	45.00	48.22
Oct. 1-15 1942	Allen, F. A. Cement Driver	0											(4 days @ 5.00)	.00	
				8	8	7	14			37	0		150.00	20.00	20.00
	Alter, J. N. Tester					0	0	0	0	0	0		(9 days @ 7.67)	.00	
			0	0	5	7	8			20	0		230.00	69.03	69.03
	Corwin, E. L. Tester	65	20	13½	14½	DO	20 DO	13 DO	9 DO	107 48	23 0	18.06	(13 days @ 8.00)	18.06	
			7	8	8					23	0		240.00	104.00	122.06
	Ward, Jimmie Bulk-cement Driver												(4 days @ 5.00)	.00	
				8	6	7½	0			21½	0		150.00	20.00	20.00
Oct. 16-31 1942	Dobie, H. G. Tester							8	8	16	0		(9 days @ 7.81)	.00	
			0	8	8	8	8	8	8	48	0		250.00	70.29	70.29
	Griffin, Aaron Bulk-cement Driver	37	6½	12½	7	10	2	0 0	0 3	37 41	0 0		(10 days @ 5.78)	.00	
			0							0	0		185.00	57.80	57.80

				8	6	7½	0			21½	0	150.00	20.00	20.00
Oct. 16-31 1942	Dobie, H. G. Tester							8	8	16	0	(9 days @ 7.81)	.00	
			0	8	8	8	8	8	8	48	0	250.00	70.29	70.29
	Griffin, Aaron Bulk-cement Driver	37	6½	12½	7	10	2	0	3	37 41	0 0	(10 days @ 5.78)	.00	
			Q							0	0	185.00	57.80	57.80
	Marker, L. E. Bulk-cement Driver											(6 days @ 4.69)	.00	
				4	4	3	7½	9	9	36½	0	150.00	28.14	28.14
Dec. 1-15 1942	James, D. S. Cement Driver	20			12	15	15	15	2	79	0	(5 days @ 6.166)	.00	
												185.00	30.83	30.83
	Scott, Lewis Cement Driver											(1 day @ 5.00)	.00	
					8					8	0	150.00	5.00	5.00
Dec. 16-31 1942	Clegg, E. E. Bulk-cement Driver	0										(5 days @ 4.69)	.00	
			7	8	8	7	8			38	0	150.00	23.45	23.45
	Davis, R. E. Bulk-cement Driver	30	15½	11½	12	11	3	11½	15	70½ 39	0 0	(7 days @ 4.69)	.00	
												150.00	32.83	32.83
	Hawes, M. T. Cement Driver	0	9½	6	11	7	9	5 14	12 10	17 66½	0 0	(14 days @ 4.69)	.00	
			7	14	9	16	11			57	0	150.00	65.66	65.66
	Scott, Lewis Cement Driver	8				15	0	13	5	41 32	0 0	(7 days @ 4.69)	.00	
			11	8½	12½							150.00	32.83	32.83
Jan. 1-15 1943	Adams, W. A. Cement Driver						8	8	6	22	0	(9 days @ 5.00)	.00	
			12	8	11	8	8	8		55	0	150.00	45.00	45.00
	Jones, D. E. Cement Driver											(3 days @ 5.00)	.00	
						8	4	13½		25½	0	150.00	15.00	15.00
Jan. 16-31 1943	Thompson, Bernie Cement Driver		8½	8	13	8 7	8 4	10 9	8 4	50 49½	0 0	(14 days @ 5.468)	.00	
			0							0	0	175.00	76.55	76.55

Plaintiff's Exhibit No. 4—(Continued)

Schedule II.—Payroll Periods in Which Compensation Was at Daily Rates Pro-rated from Guarantee—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK: S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
													(5 days @ 5.769)		
Feb. 16-28 1943	Cummins, G. L. Cement Driver					10	7	8	12	37	0			.00	
			20½							20½	0		150.00	28.85	28.85
					DO	DO	DO	DO		26	0		(4 days @ 9.615)		
	Fry, B. C. Cementer	26												.00	
													250.00	38.46	38.46
													(5 days @ 5.769)		
	Scott, A. A. Bulk-cement Driver				6	8	17	15	11	57	0			.00	
										8	0		150.00	34.61	34.61
			8					0	0	0	0		(11 days @ 5.50)		
Mar. 1-15 1943	Allred, J. T. Bulk-cement Driver		0	14	9	15	12	7	12	69	0			.00	
			23	12						35	0		165.00	60.50	60.50
													(4 days @ 5.00)		
	Barclay, G. W. Bulk-cement Driver							8	8	16	0			.00	
			8	8						16	0		150.00	20.00	20.00
													(1 day @ 5.00)		
	Beeler, O. I. Bulk-cement Driver													.00	
				7						7	0		150.00	5.00	5.00
				8	8	8	8			43	0		(4 days @ 8.333)		
	Herrick, S. F. Cementer	11												.00	
													250.00	33.33	33.33
													(5 days @ 6.00)		
	Newton, A. L. Cement Driver						8	8	8	24	0			.00	
			8	8						16	0		180.00	30.00	30.00
							6	14½	10	30½	0		(14 days @ 4.687)		
Mar. 16-31 1943	Ratslaff, W. J. Bulk-cement Driver		15	4	8½	15½	9	5	3½	60½	0			.00	
			DO	13½	6	5½				25	0		150.00	65.62	65.62
													(1 day @ 4.69)		
	Sellers, W. W. Bulk-cement Driver													.00	
						8				8	0		150.00	4.69	4.69
							8	8		16	0		(2 days @ 8.333)		
April 1-15 1943	Erwin, W. N. Tester													.00	
													250.00	16.67	16.67
							8	8	8	24	0		(3 days @ 5.00)		
	Wilson, Thomas Bulk-cement Driver													.00	

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Plaintiff's Exhibit No. 4—(Continued)

Schedule II.—Payroll Periods in Which Compensation Was at Daily Rates Pro-rated from Guarantee—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
May 1-16 1943	Blasdell, C. H. Bulk-cement Driver							8	8	16	0		(9 days @ 5.00)	2.23	
			8	14	21½	14	21	10	DO	88½	4½	2.23	150.00	45.00	47.23
	Fordyce, R. J. Bulk-cement Driver	50							8	58	0		(10 days @ 5.00)	.00	
			8	16	16½	12½	10½	10½	9½	83½	0				
			9	8						17	0		150.00	50.00	50.00
	Holder, K. C. Bulk-cement Driver												(2 days @ 5.00)	.00	
								8	8	16	0		150.00	10.00	10.00
May 16-31 1943	Byers, H. H. Cementer						10½	10	9	29½	0		(5 days @ 8.13)	.00	
			4	4						8	0		260.00	40.65	40.65
	Chandler, I. D. Bulk-cement Driver						0	0	0	0	0		(5 days @ 4.687)	.00	
			0	4						4	0		150.00	23.44	23.44
	Gilchrist, T. A. Bulk-cement Driver												(1 day)	.00	
				0						0	0		150.00	4.69	4.69
	James, F. H. Bulk-cement Driver								12	12	0		(3 days @ 4.687)	.00	
			12	12						24	0		150.00	14.06	14.06
	McClanahan, D. S. Bulk-cement Driver							8	8	16	0		(4 days @ 4.687)	.00	
			11	21						32	0		150.00	18.75	18.75
	Newton, A. L. Cement Driver		5	8½	8	6	7	DO	14½	49	0		(11 days @ 6.67)	.00	
			9	13	15	7	4	I	I	44	0				
			I	I						0	0		200.00	73.37	73.37
June 1-15 1943	Baxter, E. P. Bulk-cement Driver						8	8	8	24	0		(13 days @ 5.00)	.00	
			0	8	4	9	7	8½	5	41½	0				
			0	12	8					20	0		150.00	65.00	65.00
	Ware, J. D. Bulk-cement Driver	0			10	11	8	12	8	49	0		(10 days @ 5.833)	.00	
			8	9	12	8	2½			39½	0				
													175.00	58.33	58.33
June 16-30 1943	Newton, A. L. Cement Driver	0				I	I	I	I	0	0		(10 days @ 6.666)	.00	
			I	0	2	V	V	V	V	2	0				
			V	V	V	V				0	0		200.00	66.67	66.67

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Plaintiff's Exhibit No. 4—(Continued)

Schedule II.—Payroll Periods in Which Compensation Was at Daily Rates Pro-rated from Guarantee—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Aug. 16-31 1943	Mantz, Edward Cement Driver	9		0	0	0	0	0	0	9	0		(6 days @ 5.937)		
														.00	
													190.00	35.62	35.62
	Newson, D. T. Cement Driver												(1 day @ 5.16)		
														.00	
					8					8	0		165.00	5.16	5.16
Sept. 1-15 1943	Ash, J. D. Bulk-cement Driver		0	9½	10	16½	0 15	9 6	20 15½	29 72½	0 0		(14 days @ 5.50)	.00	
			15½	5½	6	13½				40½	0		165.00	77.00	77.00
	Barbour, C. H. Bulk-cement Driver				10	11	7½	9½	15½	53½	0		(9 days @ 5.50)	.00	
			0	3½	8	7				18½	0		165.00	49.50	49.50
	Burke, H. E. Cement Driver						8	8	8	24	0		(7 days @ 5.00)	.00	
			8	8	8	8				32	0		150.00	35.00	35.00
	Combs, Alfred Cementer			11	13	3	5	3	7	42	0		(10 days @ 9.166)	.00	
			0	7	11	7				25	0		275.00	91.66	91.66
	Newson, D. T. Cement Driver	8	8			8	8½	8	8	40½ 8	0 0		(5 days @ 5.50)	.00	
													165.00	27.50	27.50
	Newton, A. L. Cement Driver	24	8	0	8	8 4	8 5	8 4	DO	48 29	0 0		(10 days @ 6.666)	.00	
													200.00	66.66	66.66
	Patterson, T. L. Bulk-cement Driver		12	11	14	18	21	10 23	5 17	15 116	0 32	17.44	(13 days @ 5.50)	17.44	
			8½	21	19	14½				63	0		165.00	71.50	88.94
	Thompson, W. N. Tester		10	9	23	10	12	9	10 9	10 82	0 0		(12 days @ 7.50)	.00	
			2	4	16	8				30	0		225.00	90.00	90.00
Sept. 16-30 1943	Ballinwider, E. E. Mechanic				8	8	12	9	8	45	0		(10 days @ 7.67)	.00	
			DO	14	13	12	15			54	0		230.00	76.70	76.70
	Hogan, F. R. Bulk-cement Driver						8	14½	9½	32	0		(8 days @ 5.50)	.00	
			12	8	11	12	15½			58½	0		165.00	44.00	44.00
													(3 days @ 5.50)	.00	

	Hogan, F. R.														
	Bulk-cement Driver					8	14½	9½	32	0					
		12	8	11	12	15½			58½	0	165.00	44.00	44.00		
											(3 days @ 5.50)				
	Ross, J. P.											.00			
	Bulk-cement Driver														
				13½	16½	9			39	0	165.00	16.50	16.50		
Oct. 1-15	Ash, J. D.	16					DO	DO	16	0	(2 days @ 5.83)				
1943	Bulk-cement Driver											.00			
											175.00	20.66	20.66		
	Barbour, C. H.	23					0	7½	30½	0	(11 days @ 5.83)				
	Bulk-cement Driver	0	DO	DO	8½	1½	12½	5½	28	0		.00			
		0	4						4	0	175.00	64.13	64.13		
	Baxter, E. P.	29					7	7	43	0	(11 days @ 6.63)				
	Well-logging Driver	0	7	7	7	7	7	7	42	0		.00			
		0	7						7	0	190.00	69.63	69.63		
	Comstock, L. H.										(8 days @ 7.50)				
	Tester						9	13	22	0		.00			
		9	15	8	15	2	8		57	0	250.00	60.00	60.00		
	Davis, Alfred		0	0	0	0	0	0	0	0	(12 days @ 5.00)				
	Bulk-cement Driver	0	0	9½	9	15	18		51½	0		.00			
											150.00	60.00	60.00		
	Dollar, H. W.										(4 days @ 5.50)				
	Driver											.00			
				7	10	10	9		36	0	165.00	22.00	22.00		
	Graham, W. J.										(3 days @ 5.50)				
	Bulk-cement Driver											.00			
					0	6	9½		15½	0	165.00	16.50	16.50		
	Osgood, E. J.										(12 days @ 5.00)				
	Bulk-cement Driver	0	0	0	0	0	4		4	0		.00			
		12	17	13	11	13	8		74	0	150.00	60.00	60.00		
	Parcher, H. J.										(4 days @ 5.50)				
	Bulk-cement Driver											.00			
				8	8	8	8		32	0	165.00	22.00	22.00		

Plaintiff's Exhibit No. 4—(Continued)

Schedule II.—Payroll Periods in Which Compensation Was at Daily Rates Pro-rated from Guarantee—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Oct. 1-15 1943	Weatherly, G. H. Mechanic						8	8	8	24	0		(9 days @ 7.67)	.00	
			0	8	8	8	8	8		40	0		230.00	69.03	69.03
Oct. 16-31 1943	Halliburton, David B VI F								8	8	0		(5 days @ 4.687)		
			9					2½	12½	24	0			.00	
			9							9	0		150.00	23.44	23.44
Oct. 16-31 1943	Dollar, H. W., B III b1	36							8	44	0		(10 days @ 5.156)		
			0	10	7	16	11	12	10	66	0				
			24	8						32	0			.00	
													165.00	51.56	51.56
	Heck, Theodore B III b1												(6 days @ 5.156)		
					8	11	11	8	8	46	0			.00	
			8							8	0		165.00	31.84	31.84
	Sellers, J. T. B III b3												(13 days @ 5.156)		
					9	9	10	11	22	61	0			.00	
			22	22	8	8	8	8	8	84	0				
			8							8	0		165.00	67.03	67.03
	Smith, R. F. B III b2												(7 days @ 5.156)		
				14½	8½	15	7	8	15	68	0			.00	
			21							21	0		165.00	36.09	36.09
Nov. 1-15 1943	Bentley, A. S. Bulk-cement Driver												(5 days @ 5.50)		
							6	3½	DO	9½	0			.00	
			DO	10						10	0		165.00	27.50	27.50
	Daley, J. E. Electrical Survey Operators												(3 days @ 5.50)		
									8	8	0			.00	
			DO	8						8	0		165.00	16.50	16.50
	McClellan, L. L. Bulk-cement Driver	10		14	22	10	DO	DO	15	71	0		(8 days @ 6.67)		
			14	DO						14	0			.00	
													200.00	53.36	53.36
	Parrish, D. L. Cement Driver	0											(6 days @ 6.33)		
						14	12	8	8	42	0			.00	
			0	8						8	0		190.00	37.98	37.98
	Ray, R. L. Cement Driver							0	0	0	0		(11 days @ 5.50)		
			0	0	8	8	8	8	8	40	0			.00	
			8	8						16	0		165.00	60.50	60.50
	Smith, R. F. Electrical Survey Driver	21		5	8	8	8	16½	8	74½	0		(7 days @ 5.50)		
			8							8	0			.00	
													165.00	38.50	38.50
													(6 days @ 5.50)		
														.00	

			0	8						8	0	190.00	37.98	37.98
	Ray, R. L.							0	0	0	0	(11 days @ 5.50)		
	Cement Driver		0	0	8	8	8	8	8	40	0		.00	
			8	8						16	0	165.00	60.50	60.50
	Smith, R. E.	21		5	8	8	8	16½	8	74½	0	(7 days @ 5.50)		
	Electrical Survey		8							8	0		.00	
	Driver											165.00	38.50	38.50
	Souders, W. D.											(6 days @ 5.50)		
	Bulk-cement Driver					4	6	6	6	22	0		.00	
			DO	DO						0	0	165.00	33.00	33.00
	Halliburton, David	9							8	17	0	(4 days @ 5.00)		
	Trainee		8						8	16	0		.00	
			8							8	0	150.00	20.00	20.00
Nov. 16-30	Bentley, A. S.	10			12	11½	6	3	15	57½	0	(8 days @ 5.50)		
1943	Bulk-cement Driver		18	14	4					36	0		.00	
												165.00	44.00	44.00
	Graham, W. J.					0	0	18½	0	18½	0	(14 days @ 5.83)		
	Bulk-cement Driver		6½	12½	0	6½	5½	5½	DO	36½	0		.00	
			DO	14½	17					31½	0	175.00	81.62	81.62
	Halliburton, David	8							11	19	0	(6 days @ 5.00)		
	Trainee		8	7½					9½	25	0		.00	
			9	9						18	0	150.00	30.00	30.00
	Parrish, E. L.											(5 days @ 6.33)		
	Bulk-cement Driver							8	8	16	0		.00	
			8	8	8					24	0	190.00	31.65	31.65
	Ray, R. L.	16			10	13	8	14	22	83	0	(12 days @ 5.50)		
	Cement Driver		13	10	8	18	8	9	4	70	0		.00	
												165.00	66.00	66.00
	Sellers, J. T.	32			8	8	8	8	10	74	0	(9 days @ 5.83)		
	Bulk-cement Driver		10	8	15	15				48	0		.00	
												175.00	52.47	52.47
	Simmons, LeRoy	0										(7 days @ 5.50)		
	Bulk-cement Driver				8	18	8	8	8	45	0		.00	
			8	8						16	0	165.00	38.50	38.50
	Turkett, R. W.											(5 days @ 5.50)		
	Bulk-cement Driver							8	16	24	0		.00	
			8	8	8					24	0	165.00	27.50	27.50
Dec. 1-15	Able, J. D.											(7 days @ 5.50)		
1943	Trainee					12	7	13		32	0		.00	
			4	17	8	7				36	0	165.00	38.50	38.50

(Testimony of Bertha Morse.)

Plaintiff's Exhibit No. 4—(Continued)

Schedule II.—Payroll Periods in Which Compensation Was at Daily Rates Pro-rated from Guarantee—(Continued)

Payroll Period	Name and Occupation	Hours Previously Paid For	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total In Week	Hours Over 84	Pay For Hours Over 84	Rate	Extension	Total Pay
Dec. 1-15 1943	Clyburn, L. F.												(9 days @ 5.50)		
	Student Bulk-cement				14½	12	14	8	8	56½	0			.00	
	Driver		8	11	15	10				44	0		165.00	49.50	49.50
	Cummins, G. L.	40½				13	9	20	13½	96	12	7.86	(8 days @ 6.67)		
	Cement Driver		7	DO	DO	8				15	0			7.86	
													200.00	53.36	61.22
	Halliburton, David	18								18	0		(6 days @ 5.00)		
	Student		16½						8	24½	0			.00	
			8½	9½	10	10½				38½			150.00	30.00	30.00
	Hampson, J. E.												(2 days @ 5.50)		
	Trainee													.00	
					12	4½				16½	0		165.00	11.00	11.00
	Thompson, J. L.												(5 days @ 5.50)		
	Trainee								9	9	0			.00	
			14	10	8	8				40	0		165.00	27.50	27.50
Dec. 16-31 1943	Able, J. D.	36					16	7		59	0		(2 days @ 5.156)		
	Trainee													.00	
													165.00	10.31	*10.31
	Alter, J. N.	0					0	0	0	0	0		(4 days @ 8.59)		
	Tester		0	0	0	0	0	0	0	0	0			.00	
			0	0	8	18	9	7		42	0		275.00	34.36	*34.36
	Halliburton, David	38½					11½	8	8½	66½	0		(9 days @ 4.687)		
	Trainee		9½	6	9	7½	8	11½		51½	0			.00	
										0	0		150.00	42.18	*42.18
	Hogan, F. R.	55					14½	10	8	87½	3½	2.17	(5 days @ 5.937)		
	Bulk-cement Driver		15½	4½						20	0			2.17	
													190.00	29.69	*29.69
	Parrish, E. L.	44					8	16	13	81	0		(5 days @ 5.937)		
	Bulk-cement Driver		8	8						16	0			.00	
													190.00	29.69	*29.69
	Richart, J. D.												(9 days @ 5.937)		
	Bulk-cement Driver						11	15	6	32	0			.00	
			DO	8	8	15	8	8		47	0		190.00	53.43	*53.43
	Souders, W. D.	15					DO			15	0		(1 day @ 5.486)		
	Bulk-cement Driver													.00	

			DO	8	8	15	8	8		47	0	190.00	53.43	*53.43
	Souders, W. D.	15					DO			15	0	(1 day @ 5.486)		
	Bulk-cement Driver												.00	
												175.00	5.47	* 5.47
	Thompson, J. L.	40					8	8	8	64	0	(9 days @ 5.156)		
	Trainee		8	8	8	8	DO	DO		32	0		.00	
												165.00	46.40	*46.40
Jan. 1-15	Barnett, J. E.	58							8	66	0	(10 days @ 8.00)		
1944	Electrical Survey		8	8	8	8	8	8	8	56	0		.00	
	Operator													
			8	DO						8	0	240.00	80.00	80.00
	Bearce, L. C.											(4 days @ 5.50)		
	Cement Driver												.00	
						8	7	12	9	36	0	165.00	22.00	22.00
	Clyburn, L. F.	61							8	69	0	(3 days @ 5.50)		
	Cement Driver		8	8						16	0			
	Student												.00	
												165.00	16.50	16.50
	Fisher, R. L.											(4 days @ 6.33)		
	Cement Driver												.00	
						8	8	13	8	37	0	190.00	25.32	25.32
	Giggy, K. L.											(12 days @ 5.50)		
	Student Bulk-cement				DO	4½	11½	10	13	39	0		.00	
	Driver													
			1	6	3½	5	4½	15½	DO	35½	0	165.00	66.00	66.00
	Halliburton, D. S.	0										(1 day @ 5.00)		
	Student												.00	
									8	8	0	150.00	5.00	5.00
	McClintick, F. P.	0										(12 days @ 6.33)		
	Bulk-cement Driver				9	8	8½	8	10	43½	0		.00	
			DO	8	8	DO	8	9	8	41	0	190.00	75.96	75.96
	Osgood, E. J.	68							DO	68	0	(10 days @ 6.166)		
	Bulk-cement Driver		3	8	8	8	8	8	4	47	0		.00	
			DO	6½						6½	0	185.00	61.66	61.66
	Richart, J. D.	47							8	55	0	(6 days @ 6.33)		
	Bulk-cement Driver		8	DO	8	8	8			24†	0		.00	
												190.00	37.98	37.98
	Ward, Jimmie	72							DO	72	0	(11 days @ 8.33)		
	Cementer		DO	DO	7	7	7	DO	DO	21†	0		.00	
			7	7	7					21	0	250.00	91.63	91.63

[Printer's Note]: *Figures in pencil.

† Apparently clerical error.

[Endorsed]: Filed 5/16/44.

(Testimony of Bertha Morse.)

Miss Williams: If your Honor please, I will now ask the clerk to mark for identification Plaintiff's Exhibit 4-A, which has the same heading as Plaintiff's Exhibit 4, namely, "Payroll periods in which compensation was at daily rates pro-rated from guarantee." [77]

(The document referred to was marked as Plaintiff's Exhibit No. 4-A, for identification.)

Miss Williams: Mr. Sandmeyer, I understand you are willing to stipulate that Plaintiff's Exhibit 4-A for identification represents transcriptions the witness made from the defendant's payrolls covering the period subsequent to January 15th.

Mr. Sandmeyer: And that she will so testify?

Miss Williams: Yes.

Mr. Sandmeyer: If you are offering it——

Miss Williams: I am offering it.

Mr. Sandmeyer: ——I make the same objections upon each and all the grounds heretofore made to Plaintiff's Exhibit 4.

The Court: It will be offered and received in evidence. An exception will be allowed to the defendant.

The Clerk: Plaintiff's Exhibit 4-A in evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 4-A, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 4-A

SCHEDULE II-A—PAYROLL PERIODS IN WHICH COMPENSATION WAS AT DAILY RATES PRO-RATED FROM GUARANTEE

Payroll Period	Name and Occupation	HOURS WORKED DURING WORKWEEK S	M	T	W	T	F	S	Total Hours Worked	Hours Worked		Hourly Rate	Extension	Total	Guar. Wkly. Rate	Add'l Comp. per Guar.	Weekly Earnings	Amount
Jan. 30 to Feb. 12 1944	Miller, C. L. Cement Driver				8	18	10	14	50	OT		.57			(6 days @ 5.768)			
										RT		.38						
										OT		.57						
		4	6						10	RT		.38			34.61			34.61
	Fredenburg, I. L. Field Mechanic									OT	0				(Pay for 6 days only @ 7.83			
		DO	DO	DO	DO	DO	DO	DO	0	RT	0				Lay off voluntary			
										OT	0				(S) J. E. Lacy)			
		DO	DO	DO	DO	DO	DO	DO	0	RT	0	.51						46.98
	Giggy, K. L. Bulk-cement driver									OT								
		0	0						0	RT	0				11.50	(2 Days @ 5.75)		
										OT								
										RT			11.50					
	Grinstead, H. G. Bulk-cement driver									OT	0							
						8	9	10½	27½	RT	27½	.38	10.45	10.45	17.30	6.85	17.30	
										OT	22	.57	12.54					
		15½	8½	15	6½	7	2½	7	62	RT	40	.38	15.20	27.74	40.38	12.64	40.38	57.68
	McClellan, L. L. Bulk-cement driver									OT	0							
				4	DO	10½	7	16½	38	RT	38	.43	16.34	16.34	16.34	32.95	16.61	†32.95
										OT	25	.655	16.38					
		5	12	10	15	9	6	8	65	RT	40	.43	17.20	46.13*	46.15	.02*	46.15	79.10
Feb. 13-26 1944	Harrington, B. C. Field Mechanic									OT								
										RT								
										OT	0							
						8	8	13	29	RT	29	.50	14.50	14.50	22.74	8.24	22.74	22.74
	Martin, L. C. Bulk-cement driver	DO	1½	10						OT								
									11½	RT	11½	.41	4.72	4.72	43.85	(3 Days @ 6.26)		
										OT								
										RT				18.78	18.78	....	18.78	18.78
Feb. 27 to Mar. 11 1944	Goodwin, C. M. Bulk-cement driver				10	12	8	8	38	OT	0							
										RT	38	.38	14.44	14.44	23.08	8.64	23.08	
										OT	34	.57	19.38					
		DO	8	16	6	15	16	13	74	RT	40	.38	15.20	34.58	40.38	5.80	40.38	63.46
	Graham, W. J. Bulk-cement driver									OT	8	.655	5.24					
		14	DO	14½	4	DO	6	9½	48	RT	40	.43	17.20	22.44	46.15	23.71	46.15	
										OT	0							
		9½	8	12½					30	RT	30	.43	12.90	12.90	19.77	6.87	19.77	65.92
	McCollum, F. E. Bulk-cement driver									OT	36	.57	20.52					
		22	11	18	15	10	DO	D	76	RT	40	.38	15.20	35.72	40.38	4.66	40.38	
										OT	0				(4 Days @ 5.77)			
		D	D	D	D				0	RT	0		23.08	....	23.08	....	23.08	63.46
	Moore, E. W. Bulk-cement driver									OT	0	.57						

									OT	0							
	D	D	D	D				0	RT	0		23.08	....	23.08	....	23.08	63.46
Moore, E. W.									OT	0	.57						
Bulk-cement driver									RT	0	.38						
									OT	0	.57						
		4	12	11				27	RT	27	.38	10.26	10.26	17.31	7.05	17.31	17.31
Sewell, E. W.									OT	0							
Bulk-cement driver					DO	DO	DO	0	RT	0	.35	....	....	16.32	....	16.32	
									OT	26	.545	14.17					
	4	10	15	13½	5	15	3½	66	RT	40	.35	14.00	28.17	38.08	9.91	38.08	54.40
Ward, J. L.									OT	0							
Cement-driver						8	3	11	RT	11	.35	3.85	3.85	10.88	7.03	10.88	
									OT	45½	.545	24.80					
	11	8	12½	10	12	15	17	85½	RT	40		14.00	38.80	38.08	....	38.80	49.68

• Apparently Clerical Error. [Printer's Note]: † Circled in pencil.

[Endorsed]: Filed 5/16/44.

(Testimony of Bertha Morse.)

Miss Williams: That will be all the questions we wish to put to this witness, your Honor.

The Court: That is all. Thank you.

(Witness excused.)

Miss Williams: Your Honor, I realize it is late. There is one further record here that Mr. Sandmeyer and I have stipulated may be received in evidence. This is entitled [78] "Halliburton Oil Well Cementing Company, Table of man-weeks of work performed by California contract employees during the period, July 5, 1942, to March 11, 1944, inclusive." I ask it be received in evidence as Plaintiff's Exhibit No. 5. Is that correct, Mr. Clerk?

The Clerk: Yes.

The Court: It may be received in evidence.

The Clerk: Plaintiff's Exhibit 5 in evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 5, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 5

Halliburton Oil Well Cementing Company

TABLE OF TOTAL MAN-WEEKS OF WORK PERFORMED BY CALIFORNIA CONTRACT EMPLOYEES DURING PERIOD, JULY 5, 1942 to MARCH 11, 1944 inclusive.

No. of Man-Weeks	Work Hours per week
60	0- 4 inc.
14	5- 9
24	10- 14
33	15- 19
41	20- 24
61	25- 29
102	30- 34
207	35- 39
258	40- 44
368	45- 49
348	50- 54
402	55- 59
397	60- 64
372	65- 69
297	70- 74
238	75- 79
206	80- 84
192	85- 89
159	90- 94
111	95- 99
97	100-104
75	105-109
58	110-114
58	115-119
44	120-124
32	125-129
9	130-134
13	135-139
5	140-144
2	145-149
0	150-154
1	155-159
Total Man-Weeks in Period 4,284	

[Endorsed]: Filed 5/16/44.

Miss Williams: If your Honor please, there was some reference to some interpretive Bulletin No. 4 during the testimony of the last witness. Interpretive Bulletin No. 4 being referred to as the bulletin of the Department which instructs the inspectors how to make computations of hourly rates of pay. I will offer that bulletin in evidence as Plaintiff's Exhibit No. 6.

The Court: It is received in evidence.

The Clerk: Government's Exhibit 6 in evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 6, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 6

[Endorsed]: Filed 5/16/44.

INTERPRETATIVE BULLETIN

No. 4

Maximum Hours and Overtime Compensation

November 1940[1]

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
OFFICE OF THE ADMINISTRATOR

[1]Originally issued November 1938. Revised December 1939. Paragraphs 71-73 added July 1940. Revised November 1940 to conform to changes in the Act provisions effective October 24, 1940.

Interpretative Bulletin No. 4

MAXIMUM HOURS AND OVERTIME COMPENSATION

1. Section 7 of the Fair Labor Standards Act deals with maximum urs and overtime compensation. Section 7 (a) limits the number hours that an employer may employ any of his employees who are gaged in interstate commerce or in the production of goods for terstate commerce to 40 hours in any workweek—this limitation was hours up to October 24, 1939, and 42 hours from that date to tober 24, 1940—unless the employee receives compensation for his ployment in excess of 40 hours at a rate "not less than one and one-lf times the regular rate at which he is employed." It is clear that ere is no absolute limitation upon the number of hours that an ployee may work. If he is paid time and a half for overtime, he y work as many hours a week as he and his employer see fit.

2. Even as to the requirement of overtime payment there are ceptions provided for in sections 7 (b) and 7 (c). See Interpreta-e Bulletin No. 8 on Collective Bargaining Agreements under sections (b) (1) and 7 (b) (2); Regulations, Part 526, Applicable to Indus-ies of a Seasonal Nature; Interpretative Bulletin No. 14 on the Ex-ption of Agriculture and the Exemptions for Processing Agricul-ral Commodities. See also the exemptions provided for in section 13.

3. The 40-hour standard in section 7 (a) is a limitation upon the mber of hours that may be worked *in any workweek* free of time d one-half overtime compensation. A workweek consists of seven nsecutive days. It need not coincide with the calendar week but y begin on any day and at any time of any day. The beginning the workweek may be changed if the change is intended to be per-nent and not to evade the overtime requirements of the act.

4. There is no general limitation on the number of hours that may worked in any one workday, or on a Sunday, or on a holiday. Nor es the act require that time and one-half overtime compensation be id for work in excess of 8 hours or any other number of hours in a y or that time and a half be paid for work on a Sunday or on a liday. If no more than 40 hours in the aggregate are actually rked in the workweek, overtime need not be paid. Nothing in the , however, will relieve an employer of any obligation he may have med by contract or of any obligation imposed by State or Federal w to pay time and one-half or any other overtime rate for work in ess of 8 hours a day or for work on a Sunday or on a holiday.

5. The act takes a single workweek as its standard and permits no eraging of hours over two or more weeks. Thus, when an employee rks 30 hours one week and 50 hours the next, he must receive time d one-half overtime compensation for the 10 hours over 40 worked e second week, even though the average number of hours worked in

the two weeks is 40. Time lost for any reason (such as holidays, sickness, vacations) during one workweek cannot be made up the next or any following workweek unless the employee receives time and one-half overtime compensation for hours in excess of 40 in the preceding week.

6. Overtime must be compensated at a rate not less than one and one-half times the regular rate of pay at which the employee is actually employed. The regular rate of pay at which the employee is actually employed is not the minimum wage rate set in the act, but is the employee's regular hourly rate of pay. The regular hourly rate of pay (except as to workers specially provided for in section 14) may not be less than the statutory minimum of 30 cents an hour or less than the minimum wage rate fixed in an applicable wage order issued by the Administrator pursuant to section 8. But if the regular hourly rate of pay exceeds the applicable minimum wage rate, time and a half must be paid on such higher rate.

7. The regular hourly rate of pay is arrived at, in various cases, as follows:

(1) the piecework earnings (including production bonuses, if any) averaged over the hours worked each workweek, or

(2) the agreed hourly rate (average hourly rate for the workweek where there are production bonuses), or

(3) the weekly wage (including production bonuses, if any) averaged over the regular number of hours worked per week, or

(4) the weekly wage (including production bonuses, if any) averaged over the total hours worked each workweek where there is no regular number of hours.

A few examples may be helpful.

PIECEWORKERS

8. Where an employee is employed on a piecework basis, his regular hourly rate of pay is computed by dividing the total weekly piecework earnings (including production bonuses, if any) by the number of hours worked in the week. For his overtime work the pieceworker is entitled to be paid a sum, in addition to his weekly piecework earnings, equivalent to one-half the regular hourly rate of pay multiplied by the number of hours worked in excess of 40 in the week. Thus if his total piecework earnings in any workweek of 46 hours are $23, his regular hourly rate of pay is 50 cents. For the 6 hours of overtime the employee is entitled to $1.50 (6 hours × 25 cents additional compensation; for the week's work he is entitled to a total of $24.50. In other words, since the regular hourly rate of pay is 50 cents an hour the employee is entitled to be paid an amount equal to 50 cents an hour for 40 hours and 75 cents an hour for the excess 6 hours, or a total of $24.50.

HOURLY RATE EMPLOYEES

9. If the employee is employed on an hourly rate basis he must be paid for his overtime work a sum, in addition to his straight-time earnings, equivalent to one-half the hourly rate multiplied by the number of hours worked in excess of 40 in the week. Thus a 50-cent hourly rate will bring for an employee who works 46 hours a total

ekly wage of $24.50 ([46 hours × 50 cents] + [6 hours × 25 nts]). In other words, the employee is entitled to be paid an amount ual to 50 cents an hour for 40 hours and 75 cents an hour for 6 ours of overtime, or a total of $24.50. If, in addition to the earnings the hourly rate, a production bonus of $4.60 is paid, the regular ourly rate of pay is 60 cents an hour. The employee is then entitled be paid a total wage of $29.40 for 46 hours ([46 hours × 60 cents] [6 hours × 30 cents]) or ([40 hours × 60 cents] + [6 hours × 90 nts]).

SALARIED EMPLOYEES—GENERAL

10. If the employee is on a weekly salary basis, his regular hourly te of pay, on which time and a half must be paid, is computed by viding the salary by the regular number of hours worked or if no gular number of hours is worked, by the total number of hours orked each week. If the employee works a regular number of hours, e regular hourly rate of pay will be a fixed rate, remaining unanged from week to week. But if the employee works a fluctuating d not a regular number of hours, his regular hourly rate of pay ill be the average hourly rate for the week and will vary from week week. If the employee is on a monthly salary basis, the monthly lary is subject to translation into its equivalent weekly wage by ultiplying by 12 (the number of months) and dividing by 52 (the umber of weeks). A semimonthly salary will be translated into its quivalent weekly wage by multiplying by 24 and dividing by 52. nce the weekly wage is arrived at the regular hourly rate of pay will calculated as indicated above.

SALARIED EMPLOYEES—REGULAR NUMBER OF HOURS

11. Thus, if an employee back in October 1938 received $23 for a -hour week, his regular hourly rate of pay was 50 cents. On Octoer 24, 1938, he became entitled to $23.50 for that same 46-hour week 46 hours × 50 cents] + [2 hours × 25 cents]) or ([44 hours × 50 nts] + [2 hours × 75 cents]). On October 24, 1939, he became ntitled to $24 for the same 46-hour week ([46 hours × 50 cents] + hours × 25 cents]) or ([42 hours × 50 cents] + [4 hours × 75 nts]). On October 24, 1940, he became entitled to $24.50 for the me 46-hour week ([46 hours × 50 cents] + [6 hours × 25 cents]) ([40 hours × 50 cents] + [6 hours × 75 cents]).

SALARIED EMPLOYEES—IRREGULAR OR FLUCTUATING NUMBER OF HOURS

12. If an employee earns $23 per week but works a fluctuating numer of hours, his regular rate of pay will be the average hourly rate ch week. Suppose that during the course of four weeks the emloyee works 40, 46, 50, and 41 hours. His regular hourly rate of pay ch week is approximately 57.5 cents, 50 cents, 46 cents, and 56.1 nts, respectively. For the first week the employee is entitled to be id $23; for the second week $24.50 ($23 + [6 hours × 25 cents]) ([40 hours × 50 cents] + [6 hours × 75 cents]); for the third

week $25.30 ($23 + [10 hours × 23 cents]) or ([40 hours × 46 cents] + [10 hours × 69 cents]); for the fourth week approximately $23.2 ($23 + [1 hour × 28 cents]) or ([40 hours × 56.1 cents] + [1 hou × 84 cents]).

EXTRA COMPENSATION FOR OVERTIME NOT INCLUDED IN DETERMINING REGULAR RATE OF PAY

13. Extra compensation paid for overtime work need not be in cluded in determining the employee's regular hourly rate of pay Thus, if an employee earns $19.50 for a regular 39-hour workwee and time and a half or 75 cents is paid for all hours in excess of 3 the regular hourly rate of pay is still 50 cents an hour and, if th employee worked 46 hours one week he would be entitled to $24.7 ([39 hours × 50 cents] + [7 hours × 75 cents]) or ([46 hours × 50 cents + [7 overtime hours × 25 cents]). The same principle applies to pieceworker or hourly rate employee where time and a half is give for overtime work.

EMPLOYEES PAID AT TWO RATES OF PAY IN SINGLE WORKWEEK

14. If an employee, during a single workweek, is paid at two dif ferent rates of pay, his regular hourly rate of pay, on which time and one-half must be paid, is the average hourly rate for the week, com puted by dividing the weekly earnings at both rates by the total num ber of hours worked in the week. For his overtime work the employee is entitled to a sum, in addition to such earnings, equivalent to one-half the hourly rate of pay, arrived at as indicated, multiplied by the number of hours worked in excess of 40. Thus, suppose an employee works 30 hours a week at an occupation paying 40 cents an hour and 20 hours in the same week at an occupation paying 50 cents an hour. The employee's hourly rate of pay is 44 cents an hour— $22 ([(30 hours × 40 cents) + (20 hours × 50 cents)] ÷ 50 hours) and he is entitled to be paid a total wage of $24.20 ([30 hours × 40 cents] + [20 hours × 50 cents] + [10 overtime hours × 22 cents]). In other words, the employee is entitled to be paid an amount equivalent to 44 cents an hour for 40 hours and 66 cents an hour for 10 hours. The regular hourly rate of pay will be computed in the same way where a pieceworker is employed at two different piece rates during the week or in any other case where an employee works at two different rates during a week.

EFFECT OF REDUCTION OF HOURS ON TOTAL COMPENSATION

15. The question is often asked whether the act requires an em ployer who cuts hours to 40 to increase the hourly rate of his em ployees so that they will earn the same total amount they earned when they worked the greater number of hours. Thus, suppose an employer prior to October 24, 1940, paid his employees 50 cents an hour for the 42-hour week customarily worked by his employees. On October 24, 1940, the employer reduced the hours to 40 and continued to pay at the 50-cent rate. This is not a violation of the statute. Congress intended to make it economically disadvantageous for an employer to work his employees excessive hours. If an employe

liminates the excessive hours, he is under no statutory obligation increase his total wage bill by increasing the hourly rate. This pinion, however, is based solely upon an interpretation of the requirements of the act. Whether in a particular case, a contract between the employer and his employees requires the employer to continue to pay the former weekly wage ($21 in the case supposed) in spite of the reduction of hours to 40, or requires the employer to continue to work his employees 42 hours, paying time and a half for 2 hours, is a question of general contract law about which it is not the function of the Division to express any opinion. Nothing in the act itself, however, will relieve an employer of any obligation he may have assumed by contract. Whether the employer will, in the absence of a contract, maintain the former salary in spite of the reduction in hours is a matter which is left for determination to the interested parties.

BOOKKEEPING MANIPULATIONS OF RATES OF PAY: VIOLATIONS OF SECTION 7

16. Many questions have also been raised concerning the legality of various methods by which employers have resorted to adjustments or manipulations of the rates of pay to avoid the effect of the overtime requirements of the act. These questions are discussed in an opinion of the office of the General Counsel, published October 19, 1939, which demonstrates the illegal nature of these methods.[1] This opinion is printed in full in the next paragraphs.

17. "On October 24 *(1939)*[2] the Fair Labor Standards Act will require that every employee subject to its provisions receive time and a half overtime compensation for all hours worked in excess of 42 hours in any workweek. Anticipating the 42-hour week, many employers have written to the Division setting forth a variety of methods by means of which they hope to work their employees the same number of hours presently worked (in excess of 42) without paying them any more than they are now paid. This opinion deals with the legality of these various plans to avoid the effect of the 42-hour week. The opinion is equally applicable, however, to any plans now being used to avoid the effect of the 44-hour week. *(It also applies to any plans utilized subsequent to October 24, 1940, to avoid the effect of the 40-hour week.)*[2]

18. "Section 7 of the act requires that overtime must be paid at the rate of time and one-half the '*regular rate*' of pay at which the employee is employed. Time and a half must, therefore, be paid upon the rate at which the employee is actually employed and paid and not upon a fictitious rate which the employer adopts solely for bookkeeping purposes. An examination of the methods suggested by employers as a means of continuing to work overtime hours without any increased wage bill will demonstrate the illegality of adopting a bookkeeping rate for purposes of the wage-and-hour law and a different rate for any other purpose. Resorting to these methods will constitute a violation of section 7 and will subject the employer to the penalties prescribed in the act.

[1] Press Release R-4/
[2] Italics supplied in sion of November 1940.

"I. SALARIED EMPLOYEES

19. "It is clear that an employer will violate the act if he simply pays no attention to its requirements next October 24 but continues to work his employees the same number of hours (in excess of 42) they now work for the same salary they now receive. In our opinion an employer who will continue to work his employees in excess of 42 hours after October 24 for the same salary they now receive but who takes the trouble to manipulate the rates of pay in order to adopt a rate upon which he may calculate the time and a half, without incurring any additional labor cost, stands in no better position than the employer who simply and frankly disregards the overtime requirements of the act.

20. "Employers have proposed two principal methods of avoiding overtime payment to salaried employees. The employer, by one plan, will announce that henceforth the employee is employed either at the rate of 30 cents an hour or at an hourly rate in excess of the minimum. But each week the employer will pay the employee a 'bonus' to make up the fixed salary. Obviously, the employee will not actually be paid at the rate adopted by the employer for overtime calculation. His regular rate of pay for overtime purposes must be based on the total weekly earnings including the bonus.

21. "The employer eliminates the 'bonus' feature in the second method. If the employee works an irregular number of hours the employer proposes to adopt a different rate each week upon which to compute overtime. Each week the employee's earnings, on the basis of the adopted rate for 42 hours and time and a half such rate for the excess hours will equal or approximately equal the fixed salary. Thus, for example, if an employee, during the course of a month, works 43, 46, 52, and 48 hours respectively, the employer, to continue paying him $21 weekly will adopt 48 cents, 44 cents, 37 cents, and 41 cents as the respective rates of pay. Obviously, these rates are pure bookkeeping figures and the regular rate of pay on which overtime must be paid will be determined by dividing the $21 weekly salary by the hours worked each week.

22. "If the employee works a regular number of hours, the employer proposes to adopt a rate, which for 42 hours and at time and a half such rate for the hours in excess of 42, will yield the present earnings. The fact that the computations on the adopted rate will produce a figure equal to the employee's present total compensation cannot obscure the real situation. This employer will be in no better position than the employer who proposes to adopt the minimum wage as the overtime rate with a 'bonus' scheme, or to juggle the rates from week to week. This employer seeks to adopt one rate for overtime purposes, but will expressly or impliedly guarantee his employees another—based upon the weekly salary. The regular rate of pay on which overtime must be based will be determined by dividing the weekly salary by the regular number of hours worked.

"II. HOURLY RATE EMPLOYEES

23. "The employer will announce that he is 'reducing' the hourly rate of all his employees to 30 cents an hour for the first 42 hours and 45 cents for the hours in excess of 42. However, he will guarantee to

each employee a weekly amount not less than the amount presently paid. Obviously, the adopted rate of 30 cents is a fictitious, bookkeeping entry, which does not change the employees' regular rate of pay.

24. "The case is no different where the rate adopted will not be the minimum but will be a rate which, with time and a half for overtime, will yield approximately the same weekly earnings for the regular number of hours worked. Employees will not generally consent or acquiesce when the employer purports to reduce the rates unless they are assured they will not lose any pay, but will continue to receive their present earnings. When the employees are given this assurance, expressly or impliedly, they are receiving an express or implied guarantee of their present earnings and their true rate of pay remains unchanged. In the absence of an express or implied guarantee, the question will be whether the employer has actually reduced the regular rate of pay. Will the employee be paid at the adopted rate or at his present rate when he does *not* work the full number of hours? If he is paid at his present rate, in such case, then the adopted rate is not his regular rate of pay, but only a rate upon which the employer computes overtime on his books. It cannot, therefore, be the regular rate of pay upon which time and a half must be based.

"III. PIECEWORKERS

25. "An employee is now employed on a piece-rate basis. The employer will announce that henceworth the employee will be employed at an hourly rate of 30 cents an hour for 42 hours and 45 cents an hour for all hours in excess of 42, although the employee will continue to receive his full piecework earnings at the present piece rates. Obviously, 30 cents is not the regular rate of pay; it is not the rate at which the employee is actually paid. The case is no different if the employer adopts a rate in excess of the minimum. So long as the employer continues actually to pay at the piece rates now in effect, the regular rate of pay will be determined by dividing the piecework earnings by the hours worked each week, and the employee will be entitled to time and one-half that rate for hours worked in excess of 42.

"IV. SECTION 18"

26. "Much has been heard about section 18 in connection with the plans just set out. But section 18 does not enter into the picture except to reinforce the opinions just expressed as to what Congress intended by the words 'regular rate' of pay in section 7. It may be helpful, however, to discuss briefly some of the situations to which section 18 is meant to apply.

27. "By enacting section 18, Congress primarily intended to discourage the possible tendency that the minimum wage fixed in the act will become the maximum wage paid by employers. Thus, an employer who cuts the wages of his employees earning in excess of the minimum to avoid an increase in total labor cost due to the fact that

" "No provision of this act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this act."

he must raise the wages of many of his employees to 30 cents an hour will violate section 18. Section 18 was also intended to expressly allay the fears of labor that employers who are bound by contract to maintain higher wage and hour standards than those fixed in the act, would use the act as an excuse not to perform their contracts. Where the employer is under contract, the employees have no need to rely upon section 18. Nothing in the act relieves an employer from any obligation he may have assumed by contract to maintain standards higher than those fixed in the act. Section 18 removes every possible doubt on this score. The employees may proceed to enforce their contract rights."

SOME SPECIAL PROBLEMS

The maintenance of a constant wage from pay period to pay period under the Fair Labor Standards Act.

28. Two principal ways have been proposed by employers by which they might continue to pay their employees a constant wage or salary from pay period to pay period even though overtime is worked in some week or weeks. The first has been termed the "time-off" plan and the second the "prepayment" plan.

29. Before explaining the operations of the time-off and prepayment plan certain basic requirements of the act will be outlined which are material in determining the legality of any proposed plan. It must be remembered that the Fair Labor Standards Act takes a single workweek as its standard and permits no averaging of hours over two or more weeks. For the purposes of the act each week stands alone. Time and a half overtime compensation must be paid the employee for all hours which he works in excess of 40 hours in a single workweek. The pay period need not, however, coincide with the workweek. Thus, there is no objection if the pay period is biweekly, semimonthly, or monthly. But the amount of compensation due the employee at each pay period must be computed on the basis of a single workweek. It must also be remembered that overtime compensation due an employee must be paid in cash and normally at the time of the regular pay period, that is, when the employee customarily receives his straight-time compensation. It may not be accumulated to be paid at any time subsequent thereto.

THE TIME-OFF PLAN

30. To comply with the act and to continue to pay a fixed wage or salary each pay period even though the employee works overtime in some week or weeks within the pay period, the employer lays off the employee a sufficient number of hours during some other week or weeks of the pay period to offset the amount of overtime worked so that the desired wage or salary for the pay period covers the total amount of compensation, including overtime compensation, due the employee under the act for each workweek taken separately. The employer does not pay for overtime work *in time off*, nor does he average hours over a period longer than a week. Control of earnings by control of the number of hours an employee is permitted to work, not payment for overtime in time off is the essential principle of the time-off plan.

Let us trace the operation of the time-off plan in specific cases.

Case I: *Hourly Rate Employees.*—

31. Let us assume that the employee earns 50 cents an hour and is paid biweekly. The employer wishes him to earn $40 for each pay period and therefore controls his hours in the following manner:

1st pay period		2nd pay period		3rd pay period	
1st week	2nd week	3rd week	4th week	5th week	6th week
44	34	37	42	37	44

32. For the first workweek the employee is entitled to $23 ([40×50 cents]+[4×75 cents]). So that the payment of $40 at the pay period will satisfy the requirements of the act the employer permits the employee to work only 34 hours during the second week of the pay period. The employee thus becomes entitled to only $17 (34×50 cents) during the second week and the payment of $40 ($23+$17) at the pay period satisfies the requirements of the act. It will be noted that in the second pay period fewer hours are worked during the first week and overtime is worked during the second week. The employer works the employee fewer hours during the first week because he anticipates that the employee will work overtime during the second week. The employee is thus entitled to only $18.50 for the third week (37 hours×50 cents), and to $21.50 for the fourth week ([40×50 cents]+[2×75 cents]), and the payment of $40 ($18.50+$21.50) at the pay period satisfies the requirement of the act. Where overtime is expected to be worked during the later week or weeks of the pay period, however, the employer is confronted with the problem of anticipating the amount of overtime that will be worked in such week or weeks in order to keep the hours down during the early week or weeks so that the payment of the desired amount—$40 in this case—at the pay period is sufficient to satisfy the requirements of the act. Of course, if the employer miscalculates and the payment of $40 is insufficient to meet the requirements of the act at the pay period, he will be required to make up the difference in cash. This is illustrated in the third pay period, when the employer expecting that the employee would work 42 hours during the sixth workweek, worked the employee only 37 hours during the fifth workweek. The estimate was incorrect, and the employee worked 44 hours during the sixth workweek, thus becoming entitled to $41.50 for that pay period. The employee must be paid the $41.50 at the pay period; the $1.50 may not be credited to the employee and carried over beyond the pay period to be paid the employee at some subsequent time when he is given time off without pay.

Case II: *Salaried Employees.*—

33. It will be noted that in the case of the hourly rate employees the payment of the desired, fixed amount—$40—at the pay period was sufficient to meet the requirements of the act even though overtime was worked in one week of the pay period because there could be no doubt that in the shorter weeks when 34, 37, and 37 hours were worked the employee was entitled to only $17, $18.50, and $18.50, respectively. Thus the employee received $23, $21.50, and $23, the requisite amount of compensation, including overtime compensation, for the weeks in which he worked 44, 42, and 44 hours, respectively. It is important to bear this fact in mind in determining the applicability of the time-off plan to salaried employees.

34. Let us take a concrete example of the application of the time-off plan to a salaried employee who earns $40, paid biweekly and works a regular workweek of 40 hours.

1st pay period		2nd pay period		3rd pay period	
1st week	2nd week	3rd week	4th week	5th week	6th week
40	40	44	34	40	40

35. The regular rate of pay of such employee is 50 cents an hour ($20[$40÷2]÷40 hours).

36. In the third workweek of the second pay period the employee works 44 hours and is entitled to $23 ([40 hours×50 cents]+[4 hours×75 cents]). In the fourth workweek the employee works 34 hours, or 6 hours less than the regular number, and is entitled to only $17 (34 hours×50 cents). At the end of the second pay period the employee is entitled to receive his fixed biweekly salary—$40 ($23+$17).

37. The same result would follow if 34 hours were worked during the third workweek and 44 hours during the fourth.

38. The payment of the fixed salary at the pay period in the above case is sufficient to meet the requirements of the act only if it is assumed that the employer may properly deduct from the employee's biweekly salary when the employee works less than the regular number of hours in a particular week in the pay period and that, therefore, the employee is entitled to only $17 during the fourth workweek. The salaried employee thus described is very much like an hourly rate employee. An employer who is required by contract or agreement with the employee to continue to pay the fixed salary even though the employee has worked less than the regular number of hours in some week or weeks in the pay period and therefore to credit the employee with $20 for the fourth week even though only 34 hours were worked in that week, will not satisfy the requirements of the act unless he pays the employee $43 ($23 for the third week and $20 for the fourth week) at the end of the second pay period. It cannot be maintained in such case that the payment of the fixed salary—$40—at the pay period included the requisite amount of overtime compensation due the employee for the week during which he worked overtime. The employee is entitled to receive and would have received the fixed salary even if he had not worked overtime during the third week but had nevertheless worked less than 40 hours during the fourth week. *Extra* compensation must be paid an employee who works overtime. The contract or agreement to pay the fixed salary even when less than 40 hours is worked one week within the pay period may be expressed or implied. It may be implied from the fact that an employee is a *salaried* employee, who, when no question of overtime is involved, customarily receives his full fixed salary even though less than the regular number of hours is worked in some week within the pay period. Likewise if the employee's salary is not normally decreased when he is off on a holiday, vacation, sick leave, or other miscellaneous periods of leave during one week, such time off may not be used to balance overtime worked another week within the pay period. In other words, the hours which the employer lays off the employee in one week of the pay period, to balance overtime worked in another week

of the same pay period must be hours off for which the employee is not entitled to nor customarily receives compensation.

39. For this reason a time-off plan cannot be applied to salaried employees working an irregular or fluctuating number of hours. It is the nature of such an employee's employment that he will continue to receive and he customarily does receive his fixed basic salary regardless of the number of hours he may work in a particular week or pay period. His salary is not docked when he happens to work fewer hours some week or pay period. The regular rate of pay at which such employee is actually employed and upon which time and a half consequently must be paid is the average hourly rate for the week and varies from week to week. The employee is entitled for his overtime work each week to a sum, in *addition to the basic salary*, equal to one-half the regular rate of pay multiplied by the number of hours which he works in excess of 40 in the week. See paragraph 12 of this bulletin.

40. Some employers who have worked their salaried employees an irregular or fluctuating number of hours have attempted to change the nature of their employment to an hourly rate basis and then use a time-off plan. Whether the time-off plan becomes applicable will depend upon whether, after the attempted change, the employees really are hourly rate employees or whether they continue to be salaried employees. Some criteria in making this determination may be suggested. Do the former salaried employees understand that they have become hourly rate employees and will be paid, as hourly rate employees normally are paid, only for the actual number of hours they work at the hourly rate? Are the employees actually paid at the hourly rate or is some salary arrangement superimposed upon the hourly rate? Furthermore, if the determination is made that the salaried employees have been converted into hourly rate employees, the Administrator in carrying out his duties of enforcement under the act will sanction the procedure only if the hourly rate is representative of the rate at which the salaried employees may be said to have been employed while on a salary basis. An average hourly rate based upon the salaried employees' earnings and hours worked over a representative period of time (including both busy and slow seasons) will be considered to be representative of the rate at which the employees have been employed.

41. One further point needs to be brought out with respect to the application of the time-off plan. The above examples of its operation take a biweekly pay period. The plan will also apply if the pay period is semimonthly or monthly. But it will not apply to employees paid weekly because the overtime compensation due an employee may not be accumulated beyond the pay period but must be paid at the time of the regular pay period. Thus an employee who is paid his regular wages or salary weekly must also receive the overtime compensation due him weekly. The overtime compensation may not be accumulated to be paid him during subsequent weeks when he is given time off without pay. The time-off plan is thus limited to employees who are paid biweekly, semimonthly, or monthly. A prepayment plan, however, is not so limited and, as will be indicated below, may be applied to employees paid weekly.

THE SEMIMONTHLY PAY PERIOD

42. When the employee is paid semimonthly, questions have been asked concerning the method of handling the split workweek—the workweek which begins before and extends beyond the date of the pay period.

43. Since it is impossible in such case to ascertain at the pay period whether any overtime will be worked during the split workweek, the employer may pay the requisite additional compensation for the number of overtime hours worked during such workweek at the next succeeding period. At each pay period the employer will meet the requirements of the act if he pays an amount in addition to the straight-time wage or salary equal to one-half the regular rate of pay for the number of overtime hours worked in each of the *completed* workweeks in the period. In other words, overtime compensation earned in a particular workweek must be paid at the regular pay period in which such workweek *ends*. Payment for a workweek, however, may not be postponed beyond the pay period in which it ends.

44. The same principle governs the application of the time-off plan to an employee who is paid semimonthly. The employer may lay off the employee a sufficient number of hours during the other week or weeks which end in the pay period next succeeding the pay period which splits a workweek to offset the amount of overtime worked during the split workweek. In this way the payment of the desired wage or salary at the next succeeding pay period may cover the total amount of compensation, including overtime compensation, due the employee for each workweek, including the split workweek, which ended in the period. The same principle applies where the pay period is monthly.

45. One further aspect of the operation of the plan needs to be clarified. The examples of the operation of the time-off plan given herein revolve about 40 hours as the standard number of hours. The plan may, of course, revolve about a standard number of hours more or less than 40. It may be helpful to give specific examples of the operation of the time-off plan in such cases.

46. Suppose the employee earns a salary of $49, is paid biweekly, and works a regular workweek of 46 hours. Let us assume that such employee prior to the act earned $46 biweekly and worked a regular workweek of 46 hours. His regular rate of pay is 50 cents an hour ($23 [$46 ÷ 2] ÷ 46 hours). On October 24, 1938, he continued to work a regular workweek of 46 hours and was paid $47 therefor ([(44 hours × 50 cents) + (2 hours × 75 cents)] × 2). After October 24, 1939, he continued to work a regular workweek of 46 hours and was paid $48 therefor ([(42 hours × 50 cents) + (4 hours × 75 cents)] × 2). Since October 24, 1940, he has continued to work a regular workweek of 46 hours and is paid $49 therefor ([(40 hours × 50 cents) + (6 hours × 75 cents)] × 2).

47. During one week of the pay period the employee works 48 hours. To meet the requirements of the act by the payment of the fixed salary, $49, at the pay period, the employer must work the employee only 44 hours, or two hours less than the regular number, the other week of the pay period—([(40 hours × 50 cents) + (8 hours × 75 cents)] = $26, the requisite payment for the overtime week) + [(40

hours×50 cents) + (4 hours×75 cents) = $23 requisite payment for the other week] = $49, the biweekly salary).

48. Suppose the employee earns a salary of $39, is paid biweekly, and works a regular workweek of 39 hours. The regular rate of pay of such employee is 50 cents an hour ($19.50 [$39÷2]÷39 hours).

49. During one week of the pay period the employee works 43 hours. If the employer customarily pays time and a half for all hours in excess of 39 he must work the employees only 33 hours, or 6 hours less than the regular number, the other week of the pay period in order to meet the requirements of the act by the payment of the fixed salary at the pay period. ([(39 hours×50 cents) + (4 hours×75 cents) = $22.50 requisite payment for the overtime week] + [(33 hours×50 cents) = $16.50, requisite payment for the other week] = $39, the biweekly salary). If payment at straight time is customary for the hours in excess of 39 the employer must work the employee only 33½ hours, or 5½ hours less than the regular number, the other week of the pay period in order to meet the requirements of the act by the payment of the fixed salary at the pay period. ([(40 hours×50 cents) + (3 hours×75 cents) = $22.25, requisite payment for the overtime week] + [(33½ hours×50 cents) = $16.75, requisite payment for the other week] = $39, the biweekly salary.)

50. It will be noted that in the cases outlined above, the number of hours for which the employee is laid off in one week to balance overtime worked in another week of the pay period must be hours off the regular number of hours worked or the number of hours payment for which will yield the desired fixed wage or salary and not off the standard number of hours fixed in the act.

THE FORMULA THAT MAY BE FOLLOWED

51. Where the regular number of hours worked is 40, the formula which employers have used to comply with the act by paying the fixed salary at the pay period is to lay off the employee one and one-half hours in one week for each hour worked in excess of 40 in the other. However, this formula does not work out where the regular number of hours is more or less than 40 hours. Thus, in the case given above where the regular number of hours worked is 46, it is clear that the fixed salary already includes payment at time and a half for 6 overtime hours. These 6 hours may, therefore, be used to balance on a one-to-one basis 6 hours worked in excess of 46, which also must be paid for at time and a half. Thus in the example given, 2 hours in excess of 46 were worked in one week of the pay period; these are balanced by working the employee 2 hours less than 46 in the other week of the pay period. If the employee had worked 50 hours during one week, the fixed salary would be sufficient payment if 42 hours were worked the other week. But if 54 hours were worked one week, 6 of the hours in excess of the regular number could be offset by 6 hours off the regular number, 46, because they are all paid for at time and a half. The other 2 hours in excess of 46, however, must also be paid for at time and a half and can be offset only by three additional straight-time hours off 46 (one and one-half for one). Thus a total of 9 hours less than 46, or 37 hours, must be worked in one week of the pay period when 54 hours are worked the other so that payment of the fixed

salary at the pay period will satisfy the requirements of the act. ([(40 hours × 50 cents) + (14 hours × 75 cents) = $30.50, requisite payment for the overtime week] + [(37 hours × 50 cents) = $18.50, requisite payment for the other week] = $49, the biweekly salary).

52. In the case given above where the regular number of hours is 39 and the employer customarily paid time and a half for all hours worked in excess of 39, one hour in excess of 39 in one week may be offset only by one and one-half hours off 39 in another week. If the employer customarily pays straight time for the hours in excess of 39, then one hour in excess of 39 in one week may be offset by one straight time hour off 39 in another week, but every additional hour (i. e., in excess of 40) may be offset only by one and one-half additional hours off 39 in the other week.

THE PREPAYMENT PLAN

53. Though overtime compensation due an employee must normally be paid at the time of the employee's regular pay period, there is no objection if the employer pays overtime compensation to become due to an employee *in advance*. This is the basic principle of the prepayment plan. Thus some employers in an attempt to keep the wage or salary constant from pay period to pay period, have resorted to paying their employees a sum in excess of what they earn or are entitled to in a particular week or weeks, which sum is considered to be a prepayment or advance payment of compensation for overtime to be subsequently worked. The operation of a prepayment plan may best be illustrated by specific examples.

A. *Case I. Hourly Rate Employees.*—

54. Let us take the example of an employee who is paid 50 cents an hour and works the following schedule:

Weeks	1	2	3	4	5	6	7	8
Hours worked	35	33	44	40	42	38	46	38

55. The employer and the employee agree that in any week in which the employee works less than 40 hours, the employer will advance to the employee the difference between the amount equal to his regular rate of pay for 40 hours and the amount he would have received if he had been paid only for the number of hours he worked.

56. Thus in the first week the employee will be paid $20, although he was entitled to only $17.50. The employer will credit himself with $2.50. For the second week the employee will be paid $20 although he was entitled to only $18 and the employer will credit himself with $2. For the third week the employee will be paid $20 although he was entitled to $23 ([40 hours × 50 cents] + [4 hours × 75 cents]). In this way the employee will work off $3 of the amount previously credited to the employer. The employee will now carry a credit of $1.50. For the fourth week the employee will be paid $20, to which he was entitled. For the fifth week the employee will be paid $20 although he was entitled to $21.50, and will work off $1.50 more of the amount still credited to the employer. The employer will now carry no credit. For the sixth week the employee will be paid $20 and $1 will be credited to the employer. The employer will now carry a credit of $1. For the seventh week the employee will be paid $23.50 although he was entitled to $24.50. ([40 × 50 cents] + [6 × 75

cents]). The employee will thus have worked off the total credit accumulated by the employer and *will be paid in cash* the additional $3.50 due him. For the eighth week the employee will be paid $20 and the employer will credit himself with $2.

57. It will be noted that only credits to the employer will be carried over beyond the pay period; credits to the employee, i. e., overtime compensation due the employee, will not be carried over beyond the pay period to be consumed by subsequent employer advances, but will be paid in cash at the pay period. In this way the employer will never be indebted to the employee.

58. It cannot be emphasized too strongly that the validity of the plan depends upon the assumption that when the employee receives $20 in the weeks when he works less than 40 hours, he is being paid in excess of what he earns or is entitled to and is therefore given a loan or advance which he may work out by subsequent overtime. Whether this is actually the fact is easily susceptible of determination in the case of hourly rate employees. But even in their case the question sometimes arises as to whether the loan or advance is really a loan or advance and not really a salary arrangement by which, for example, the employee in the above case is entitled to $20 for work already performed without subsequent overtime work. The determination of this question may depend upon what the parties understand will happen when an employee severs his relationship with the employer. If the employer still has some accumulated credits at that time, will some attempt be made to get back the amount of the loan or advance from the employee since there is no further possibility that it will be worked out by subsequent overtime? The fact that no attempt will be made by the employer to collect the amount due him either by deducting such amount from the employee's last check or by some other way is some indication that the loan or advance is simply a fictitious bookkeeping device.

59. Similarly the fact that at the end of the year or at the end of some shorter period credits accumulated by the employer are simply wiped off the slate and a new start is made, is some indication that there is no loan or advance in fact but simply a bookkeeping device. If there is no prepayment in fact and the plan is nothing but a bookkeeping device, the act will have been violated. No one criterion may be sufficient to determine this question but all the criteria set forth herein will be given weight in deciding this question.

Case II. *Salaried Employees.*—

60. Let us take the example of a salaried employee who earns $20 a week for a regular workweek of 40 hours and whose regular rate of pay is therefore 50 cents an hour ($20÷40 hours).

Weeks	1	2	3	4	5	6	7	8
Hours	36	40	40	40	40	40	40	48

61. For the first week the employee will receive $20 although he earned and is entitled to only $18 (36 hours × 50 cents). The employer will credit himself with $2 as a prepayment of compensation for overtime to be subsequently worked. The employee will receive $20 during each of the next six weeks. For the eighth week the employee is entitled to $26 ([40 hours × 50 cents] + [8 hours × 75

cents]). He will thus have worked off the entire credit of $2 accumulated by the employer and will receive $24 in cash.

62. The validity of the plan as outlined depends upon the assumption that the employee is overpaid when he received $20 for the first week of 36 hours and that therefore the employer has loaned or advanced him $2. In addition to the criteria set forth under case I to detremine whether the loan or advance is real or only a bookkeeping device an additional consideration comes into play with respect to the salaried employee who works a regular number of hours. If the employer, who contemplates adopting a prepayment plan, is presently required by contract or agreement with the employee, express or implied, to pay him the fixed wage or salary even when the employee works less than the regular number of hours in some week or weeks, it cannot be said that the employee is paid in excess of what he earns or is entitled to when he receives the fixed wage or salary in such weeks. He has received no loan or advance and no amount therefore may be credited to the employer as a prepayment of compensation for overtime to be subsequently worked.

63. For the same reason a prepayment plan cannot be applied to a salaried employee who works a fluctuating number of hours. Since the nature of such an employee's employment is that he will receive the fixed basic salary regardless of the number of hours worked it cannot be said that such an employee is paid in excess of what he earns or is entitled to in any week in which he receives the fixed salary even though such weeks may have been short weeks.

64. We have considered above the question of the conversion of a salaried employee working a fluctuating number of hours into an hourly rate employee.

65. The amounts paid to an employee while absent from work on a vacation, holiday, sick leave, or other miscellaneous periods of leave, may not be considered by the employer as prepaid overtime compensation just as the time off during such periods may not be used to balance overtime worked within the pay period. Payment during holidays, vacations, etc., is not payment *for overtime* and may not be considered by the employer as compensation for the employee's overtime work under the act.

66. In two respects a prepayment plan, if it may be properly applied to salaried employees, is not subject to the same restrictions as a time-off plan. It is not confined, in its operation, to the pay period. Credits to the employer, i. e., amounts paid by him in excess of the amounts earned by the employee or to which the employee is entitled, may be carried over beyond the pay period until they are consumed by the overtime work of the employee. Secondly, a prepayment plan may be applied to employees who are paid weekly.

67. It need not be restricted in its application, as is the time-off plan, to employees paid on a biweekly, semimonthly, or monthly basis. Under a prepayment plan the employee is being paid the overtime compensation due him, either in advance or, at the latest, at the time of the regular pay period.

68. Where applicable, a time-off and prepayment plan may be applied in conjunction with each other.

The application of section 7 in cases where a union agreement or other agreement between an employer and his employees calls for the payment of overtime or other special compensation not required by the act

69. The question has been asked as to what are the requirements of section 7 in cases where a union agreement or other agreement between an employer and his employees calls for the payment of overtime or other special compensation which is not required to be paid by the act. Extra compensation paid for overtime work, even if required to be paid by a union agreement or other agreement between the employer and his employees need not be included in determining the employee's regular hourly rate of pay (see par. 13 of this bulletin). Furthermore, in determining whether he has met the overtime requirements of section 7 the employer may properly consider as overtime compensation paid by him for the purpose of satisfying these requirements, only the extra amount of compensation—over and above straight time—paid by him as *compensation for overtime work—that is, for hours worked outside the normal or regular working hours*—regardless of whether he is required to pay such compensation by a union or other agreement. In no week, of course, will the overtime requirements of section 7 be met unless the employee receives an amount equal to at least his regular rate of pay for 40 hours and time and one-half such rate for the hours worked in excess of 40. It should be noted, however, that the act does not supersede provisions of a collective bargaining agreement or other agreement between an employer and his employees which set standards higher than those set in the act; which, for example, require the employer to pay time and a half for all hours worked in excess of 8 hours a day regardless of how many hours in the aggregate the employee may work in a week. Nothing in the act, therefore, relieves an employer from any obligation he may have assumed by contract (see Interpretative Bulletin No. 8, especially pars. 4 through 9 thereof). It should be pointed out, however, that the question as to what are the obligations of the employer under the agreement is a question of general contract law about which it is not the function of the Division to express any opinion.

70. It may be helpful to give some specific examples raising the question under discussion.

One preliminary case may be put.

(1) *An agreement of employment calls for the payment of time and one-half for all hours worked in excess of 40, the regular weekly number of hours fixed in the agreement.*

Clearly payment in accordance with the requirements of the agreement will satisfy the requirements of section 7. The agreement already contains the time and one-half penalty. The act does not require the employer to pay time and one-half upon time and one-half. It merely imposes upon the agreement the sanction of law, and a violation of the agreement becomes a violation of the act, subject to all the penalties prescribed in the act.

(2) *An agreement of employment calls for the payment of time and one-third on all hours worked in excess of 39, the regular weekly number of hours fixed in the agreement.*

(a) Suppose an employee is paid $1 an hour and works 41 hours in one week.

In accordance with the requirements of the union agreement the employee is entitled to be paid $41.66 ([39×$1]+[2×$1.33]). It has been argued that the employer, in order to meet the requirements of section 7 and the obligations of his contract, must pay the employee at least $41.83

([39×$1]+[1×$1.33]+[1×$1.50]). In our opinion, however, since the extra 33 cents for the 1 hour in excess of 39 up to 40 is paid by the employer to the employee *as overtime compensation*, the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. When the extra 33 cents is so credited the amount paid the employee—$41.66 is in excess of an amount equal to the employee's regular rate of pay for 40 hours and time and one-half such rate for the extra 1 hour, and the employer has satisfied the requirements of section 7.

(b) Suppose an employee is paid $1 an hour and works 54 hours.

The employee is required to be paid $58.95 by the union agreement ([39×$1]+[15×$1.33]). Since the extra 33 cents for the 1 hour in excess of 39 up to 40 is paid by the employer to the employee *as overtime compensation*, the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. However, even if such amount is credited to the employee, the payment of $58.95 will not satisfy the requirements of the act because it is less than an amount equal to the employee's regular rate of pay for 40 hours and time and one-half such rate for the extra 14 hours or $61 ([40×$1]+[14×$1.50]). Thus the employer must pay an additional $2.05 ($61—$58.95), or a total of $61 in order to meet the requirements of section 7.

(3) *An agreement of employment calls for the payment of time and one-half for all hours worked in excess of 8 hours, the normal or regular workday.*

Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	10	10	10	10	8	0	0
Pay under union agreement	$11	11	11	11	8	0	0

In our opinion the payment of $52 to which the employee is entitled under the union agreement, will satisfy the requirements of section 7. Since the extra $4 for the daily overtime is paid by the employer to the employee *as overtime compensation* the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. When the extra $4 is so credited, the amount paid the employee—$52—is an amount equal to the employee's regular rate of pay for 40 hours and time and one-half such rate for the extra 8 hours, and the employer has satisfied the requirements of section 7. We reject the contention that the employer must pay $56 to satisfy the requirements of the act. ([48×$1]+[8 daily overtime hours×50¢]+[8 weekly overtime hours×50 cents]). To do so would impose a double penalty upon the employer by requiring him to pay time and one-half for hours already paid for at time and one-half.

(4) Suppose an employee was paid $4.04 a day prior to the effective date of the act for a normal workday of 8 hours. His workweek consisted normally of 6 workdays. Thus he earned $24.24 a week for a workweek of 48 hours. The parties agree that henceforth the employee's rate of pay will be 46.5 cents an hour for the first 6⅔ hours of the day and 70 cents (one and one-half times 46.5 cents) for the remaining 1⅓ hours. The employee will continue to receive $4.04 a day or $24.24 for a 48 hour workweek. The employer maintains that the employee's regular rate of pay for the purposes of the act is 46.5 cents an hour and that, therefore under the interpretation set forth in the foregoing paragraph, the requirements of section 7 of the act are met because $24.24 is an amount equal to 46.5 cents an hour for 40 hours and 70 cents an hour for the extra 8 hours. In our opinion the employer's contention is without merit. The division of a normal 8 hour workday into 6⅔ straight time hours and 1⅓ overtime hours is purely fictitious. The employee is not paid at the rate of 46.5 cents an hour and the alleged overtime rate of 70 cents is not paid for overtime work. The interpretation set forth in the foregoing paragraph does not apply because in fact no extra compensation is paid as no hours are worked outside the normal or regular daily working hours. The employee will continue to receive $4.04 a day for a normal 8-hour day. His regular rate of pay is not 46.5 cents—which is a fictitious bookkeeping rate adopted solely as the basis upon which to compute overtime in order to evade the requirements of section 7 of the act—but 50.5 cents an hour. See

pars. 16 through 27 of this bulletin. For a workweek of 48 hours the employee should receive $26.28 ([40×50.5¢]+[8×76¢]).

(5) *An agreement of employment calls for the payment of straight time up to 48 hours and double time thereafter.*

Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	8	8	8	8	8	8	8
Pay under union agreement	$8	8	8	8	8	8	16

In our opinion the payment of $64 to which the employee is entitled under the union agreement will satisfy the requirements of section 7. Since the extra $8 for the 8 hours in excess of 48 is paid by the employer to the employee *as overtime compensation* the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. When the extra $8 is so credited the amount paid the employee—$64 is an amount equal to the employee's regular rate of pay for 40 hours and time and one-half such rate for the extra 16 hours and the employer has satisfied the requirements of section 7. Of course, should the employee work only 48 hours one week he must be paid $52 ([40×$1]+[8×$1.50]) for that week in spite of the provision in the union agreement that he is to receive the overtime rate only after 48 hours are worked in a week.

(6) *An agreement of employment calls for the payment of time and one-half for all hours worked on a holiday or on Sunday.*

(a) Suppose an employee paid $1 an hour works the following schedule: Tuesday is a holiday.

	M	T	W	T	F	S	S
Hours	8	8	8	8	8	8	0
Pay under union agreement	$8	12	8	8	8	8	0

In our opinion the payment of $52 to which the employee is entitled under the union agreement will satisfy the requirements of section 7. We reject the contention that the employer must pay $56 to satisfy the requirements of the act ([48×$1]+8 holiday overtime hours×50 cents] +[8 weekly overtime hours×50 cents]). To do so would impose a double penalty upon the employer by requiring him to pay time and one-half for hours already paid for at time and one-half.

(b) Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	0	8	8	8	8	8	8
Pay under union agreement	$0	8	8	8	8	8	12

This case is no different from the preceding case, and in accordance with our opinion, the payment of $52 to which the employee is entitled under the union agreement will satisfy the requirements of section 7.

It has been urged upon us that a time and one-half rate for work on Sunday and holidays is not an overtime rate at all but is merely a straight-time rate for such days. The straight-time rate is higher because work on Sundays and holidays is more onerous than work on ordinary workdays. If this suggestion were adopted the employee must be considered as being employed at two different rates during the week and his regular rate of pay and the overtime compensation due him would be computed in accordance with the interpretation set forth in paragraph 14 of the bulletin. However, it is our opinion that generally work on Sundays and holidays may properly be considered as overtime work and the interpretation set forth herein may be considered applicable.

(7) *An agreement of employment provides that an employee shall be paid for holidays, even though he does not work on such days.*

Suppose an employee paid $1 an hour works the following schedule: Tuesday is the holiday.

	M	T	W	T	F	S	S
Hours	8	0	8	8	8	8	8
Pay under union agreement	$8	8	8	8	8	8	8

The employee is entitled to $56 under the union agreement. However, it is our opinion that only the payment of $60 will satisfy the requirements of section 7 ([40×$1]+[8×$1.50]+[$8 for Tuesday]=$60). The employer may not credit himself with the $8 paid for the holiday *as overtime compensation* paid to meet the requirements of section 7. The amount paid by the employer to the employee for a holiday which is not worked is not paid *as compensation for overtime work*, but for some other reason.

The same result for the same reason follows where an employer pays an employee during periods of illness, vacation, or other miscellaneous periods of leave. The amounts so paid by the employer may not, therefore, be credited by him as overtime compensation paid to meet the requirements of section 7.

Such periods of compensated leave are not given as compensation for overtime work but for a variety of reasons—to reward employees for faithfulness, loyalty, and length of service; to bolster personnel morale, to safeguard the physical health and well-being of employees by giving them needed rest and relaxation, and to conform to progressive business practice, etc. The very term vacation with pay, for example, negates any idea that such payment was made as overtime compensation.

The fact, however, that $8 is paid for the holiday, in the above example, does not raise the employee's regular rate of pay which remains $1.

(8) *An agreement of employment sets a daily rate based upon an 8-hour day and guarantees the employee that if he works 4 or more hours a day he will be given a full day's pay.*

Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	8	4	8	8	8	8	0
Pay under union agreement	$8	8	8	8	8	8	0

In our opinion only the payment of $50 will satisfy the requirements of section 7. ([40×$1]+[4×$1.50]+[$4 extra for the 4 hours worked on Tuesday]=$50.) The employer may not credit himself with the extra $4 paid on Tuesday as compensation paid to meet the requirements of section 7 because such amount was not paid for overtime work. The fact, however, that $8 is paid for 4 hours' work on Tuesday does not raise the employee's regular rate of pay, which remains $1.

The same result follows where a union agreement provides that if an employee is asked to report for duty on any day and does so he must be given at least a half day's pay even if he does not work a half day. The amounts that may be paid under such an agreement over and above what the employee would receive if paid only for the number of hours worked are not paid for overtime work but to compensate the employee for the consumption of his time and to discourage employers from calling their men in to work for only a fraction of a day when they might get full time elsewhere.

(9) *An Agreement of Employment Provides that Men Doing Special Work Shall Receive 6 Hours' Pay for Such Work, Regardless of the Time Actually Consumed in Performance.*

Suppose an employee paid $1 an hour works the following schedule. Three hours on Tuesday were worked on the special work.

	M	T	W	T	F	S	S
Hours	8	8	8	8	8	4	0
Pay under union agreement	$8	11	8	8	8	4	0

In our opinion, the employer may not credit himself with the extra $3 paid for the special work on Tuesday as compensation paid to meet the requirements of section 7 because such amount was not paid *for overtime work* but for *special work*. The employee is, in fact, paid a different higher rate for special kind of work and is thus paid at two different rates during a single workweek. Paragraph 14 applies; the employee's regular rate of pay is approximately $1.07 ($47, the employee's straight time pay, ÷44 hours). To satisfy the requirements of section 7, the employer must pay $49.14 ([$47 for 44 hours at straight time]+[4 overtime hours×53½ cents, one-half the regular rate of pay]).

71. The same principles expressed in the foregoing opinions would, likewise, apply where a State or Federal law calls for the payment of overtime or other special compensation which is not required by the Fair Labor Standards Act. They would also apply where an employer customarily pays overtime or other special compensation which is not required by the act.

72. *The overtime requirements of section 7 (b):* A similar problem is raised by section 7 (b) which provides that employees subject to the partial exemption from the overtime provisions of section 7 (a) provided by sections 7 (b) (1), 7 (b) (2), or 7 (b) (3) must receive time and one-half overtime compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be . . . The question is asked as to what are the requirements of section 7 (b) in this respect when the employee works both in excess of 12 hours in a day and in excess of 56 hours in the aggregate in any workweek. It is our opinion that the employer must pay either daily or weekly overtime, *whichever is greater*, but not both. It may be helpful to illustrate this opinion by specific examples.

(a) Suppose an employee paid $1 an hour works the following schedule:

	M	*T*	*W*	*T*	*F*	*S*	*S*
Hours	14	14	14	14	10	0	0

On a daily basis the employee is entitled to 8 hours of overtime pay, or a total of $70, for the week ($[(12\times\$1)+(2\times\$1.50)\times4]+[10\times\$1]=\$70$). On a weekly basis the employee is entitled to 10 hours of overtime pay, or a total of $71, for the week ($[56\times\$1]+[10\times\$1.50]=\$71$). In our opinion, the employer must pay $71 to satisfy the requirements of the act.

(b) Suppose the employee paid $1 an hour works the following schedule:

	M	*T*	*W*	*T*	*F*	*S*	*S*
Hours	16	14	14	14	6	0	0

On a daily basis the employee is entitled to 10 hours of overtime pay, or a total of $69, for the week. On a weekly basis the employee is entitled to 8 hours of overtime pay, or a total of $68, for the week ($[56\times\$1]+[8\times\$1.50]=\$68$). In our opinion, the employer must pay $69 to satisfy the requirements of the act.

73. *Supper money.*—The question has often been asked as to whether amounts paid by an employer, commonly known as "supper money" may be credited to the employer in determining whether he has satisfied the overtime requirements of section 7. It is our opinion that generally amounts paid as supper money are not paid *as overtime compensation* but are paid to recompense the employee for expenses incurred while working later than usual. Normally the amounts so paid do not depend upon the number of overtime hours worked but approximate the price of a supper. Furthermore, in the usual case, employers do not pay social-security taxes on the amounts paid as supper money, thus indicating that they do not consider such amounts to constitute wages paid the employee. Obviously, if such amounts are not considered to be wages, they may not be considered as overtime compensation for the purpose of section 7. For these reasons the employer in the usual case may not take credit for supper money in determining whether he has satisfied the requirements of section 7.

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Mr. Bertram: I will call Mr. McCommon. [79]

JOSEPH CARGIAL McCOMMON,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Joseph Cargial McCommon.

The Clerk: Will you take the stand, please.

By Mr. Bertram:

Q. Mr. McCommon, where do you reside?

A. 121 East Putnam, Whittier.

Q. Are you now employed by the Halliburton Oil Well Cementing Company? A. I am not.

Q. Were you at one time employed by that company? A. I was.

Q. During what period of time?

A. When they taken over the cementing, I believe it was March of '40 or '41, until December 19th of '42.

Q. Mr. McCommon, during the course of your employment by the Halliburton Oil Well Cementing Company did you receive a contract of employment from that company in the form of Exhibit A, which I will show you? A. I did.

Q. Did you also receive from the company a contract in the form of Exhibit B, which I show you?

(Testimony of Joseph Cargial McCommon.)

A. Well, it looks pretty much the same. It has been [80] quite a while ago, but it looks the same.

Mr. Bertram: For the record, I should say these two exhibits are properly numbered 1-A and 1-B.

Q. By Mr. Bertram: Did you sign those contracts when they were offered to you, or either of them, Mr. McCommon?

A. I did not. I had about four, I think, offered to me. The last one I did sign with a clause agreeing to work 48 hours instead of 84, without overtime compensation.

Q. Did you have any conversation at or about the time you received the contract in the form of Exhibit 1-A with any of the officials of the company with respect to your signing that contract?

A. Yes, a number of times.

Q. On the first occasion with whom did you have such a conversation?

A. I believe it was Mr. Lacy, the first time.

Q. When did that take place, approximately?

A. Well, shortly after I received them, along the first part of July of '42. I don't remember just what date.

Q. Where was that?

A. In the Bakersfield shop.

Q. Was anyone else present besides yourself and Mr. Lacy?

A. Yes, Mr. Pierce was present at the time we had our first talk about it.

Q. What was said by Mr. Lacy and what was

(Testimony of Joseph Cargial McCommon.)

said by you [81] with respect to the signing of this contract?

Mr. Sandmeyer: To which we object, your Honor, upon the ground it is irrelevant, incompetent and immaterial. This man is no longer working for the company and he says he did not sign it, so what materiality is there to what they may have discussed about signing it?

The Court: He said he did sign one but he limited the working hours to 48, and he would not sign one for 84.

Mr. Sandmeyer: All right. We object on the ground it doesn't show which one of the four offered to him the conversation had to do with. If it is any one other than the one he signed it is irrelevant, incompetent and immaterial. If it does have anything to do with the one we signed we object on the ground it tends to vary the terms of a written instrument.

The Court: The action here is not on a contract, is it, Mr. Sandmeyer, between the parties?

Mr. Sandmeyer: No, but we have the same rule applicable here. I would like to be heard on this if there is any question about it. I am familiar with the rule.

In the first place, you have the rule that excludes any probative evidence where there is a contract. You have an exception where there is a third party litigate who is asserting his right in and to the subject matter of the litigation; that is an exception.

We have here a peculiar situation and we are

(Testimony of Joseph Cargial McCommon.)

governed by [82] the rule and not the exception for this reason: Assuming a valid contract, which we must for the purpose of this case, and particularly in view of the contract itself, the same terms as the one that the Supreme Court approved. We have a contract, and if it is valid then we are not obligated to do anything more than or other than is provided in that written contract. Therefore, if we have fully performed, if the Halliburton Company has fully performed its obligation to the individual employee involved there has been no violation.

Now, therefore, if we have fully performed our obligation and there is no violation of the Act, the Administrator has nothing to complain about and he is bound by that.

Let's say the employee comes into the court, before your Honor, and seeks to get something other than is provided in the contract, something more or in addition. Your Honor hears all the evidence and says the contract is valid and binding. That is all that this defendant is obligated to do, is what it has set forth in the contract. Therefore, your Honor renders judgment for the defendant and the plaintiff recovers nothing. If the next week the Administrator can come in and say that and get a judgment, saying that very contract your Honor has held to be valid and binding on the employee and employer is no longer binding, how could that be? The Administrator is in a representative capacity here. That is, if that is all, if the terms of the [83] contract, the obligation of the contract is

(Testimony of Joseph Cargial McCommon.)

all the employee can enforce, how can the Administrator say that that is not controlling, because we don't owe him anything more.

All the Administrator can say is if under the law we owe the employee more than we have performed we have violated the contract. If we have rendered all to the employee that we are obligated to render under the law, or otherwise, we have not violated the Act. Therefore, what is binding upon the employee must necessarily be binding upon the Administrator. So it comes within the rule and not the exception.

Mr. Bertram: May we be heard on that?

The Court: It is not the best evidence, of course.

Mr. Bertram: It is not offered for that purpose, your Honor. There are several complete answers to Mr. Sandmeyer's objection.

In the first place, this witness did not sign the contract so he is not bound.

Mr. Sandmeyer: He says he did.

Mr. Bertram: With the modification of it.

The Court: The best evidence, of course, is that contract.

Mr. Bertram: He simply made a new offer by altering the terms of the contract offered to him. He made a new offer to the company.

The Court: Yes, but he said he did sign on condition he would only work 48 hours. Now then, if he did we ought [84] to have that contract.

Mr. Bertram: Well, we are getting at in this law suit what this contract provided. We submit to

(Testimony of Joseph Cargial McCommon.)

your Honor that in the Belo case and in other cases which have had rate of pay contracts in them the holdings were that the contract was not in and of itself complete and unambiguous, but it was doubtful, and it was necessary for the court to go into the intent of the parties.

The Court: That is always the rule wherever you have a contract susceptible to several interpretations and it is not clear. It is always the rule you can introduce parol evidence to clarify the conditions.

Mr. Bertram: That is just what we have in this case here.

The Court: I have not seen the contract.

Did you sign a contract?

The Witness: I signed the one with the modification and sent it to E. P. Halliburton himself.

Mr. Sandmeyer: I assume it is the same form of 1-A and 1-B, I would like to know what is ambiguous about the controlling part of either one of those contracts, about what his rate of pay should be. That is the only one we are concerned with here.

It says, "Employer agrees to employ employee as a" as described "and to pay employee for his services a regular basic rate of ..... cents per hour for the first [85] 40 hours of any work week, and not less than one and one-half times such basic hourly rate of pay for all time over 40 hours in any work week, with a guarantee that employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum

(Testimony of Joseph Cargial McCommon.)

not less than so many dollars for each work week."

In the first place, how could you say it any clearer than that? A third party cannot object and claim to have a contract that is not interpretive, that is ambiguous. Only at a suit of one of the parties to the contract can you raise the question of interpretation. That is, assuming you are bound by it and you want to know what it means.

The Court: The witness said he signed a contract.

Mr. Bertram: Let me ask a preliminary question.

Q. By Mr. Bertram: Mr. McCommon, was the contract you signed, with the notation modifying its terms, accepted by the company?

The Court: That calls for a conclusion. We would have to find the contract.

Mr. Sandmeyer: Certainly.

The Court: Do you not have the contract?

Mr. Bertram: We don't have it.

The Court: Does the defendant have the contract?

Mr. Sandmeyer: Yes. In fact, we have two of them, contrary to his testimony, I think. Do you want both of them? [86]

The Court: We will take our adjournment at this time until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., May 16, 1944, an adjournment was taken until 10:00 o'clock a.m., Wednesday, May 17, 1944.) [87]

Los Angeles, California,
Wednesday, May 17, 1944, 10 A.M.

The Court: Mr. Cross, call the calendar.

The Clerk: No. 2912, L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, vs. Halliburton Oil Well Cementing Company, for further court trial.

The Court: Proceed.

(Whereupon, further argument was had.)

The Court: I think I will have to sustain the objection of the defendant and give an exception to the government.

I do not believe I will permit the defendant to come in and interpret this whole thing entirely different than what is set out in the contract and set out in his records, and say, "No, that was not it at all." I think the defendant is bound, and the government equally, with the actual mechanics and actual records and the actual payments and the guarantee that was in here. I think from a legal standpoint that gives us the whole basis. The court looks at it one way or another.

I want the record to be in such shape if either party is dissatisfied at the conclusion of the trial that there will be enough in the record to have a complete review of the case to determine by another court whether the court has erred in his construction of the contract. I think that can be done by the facts that are in the record. I [89] will sustain the objection and allow an exception to the government.

Mr. Bertram: Counsel, do you have the two copies of the contract you showed me yesterday?

Mr. Sandmeyer: Yes.

Mr. Bertram: Mr. Clerk, will you mark these exhibits for identification next in order.

The Clerk: They will be Plaintiff's Exhibits 7 and 8 for identification.

(The documents referred to were marked as Plaintiff's Exhibits Nos. 7 and 8, for identification [89-A]

JOSEPH CARGIAL McCOMMON,

recalled as a witness on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

By Mr. Bertram:

Q. Mr. McCommon, do you recognize Government's Exhibit 7, for identification?

A. I do.

Q. Will you state what it is?

A. Well, it was the contract that I was supposed to have signed.

Mr. Sandmeyer: I think I objected to that upon the ground it shows what it is on the face.

The Court: He has not asked him for the contents. He asked him to be sure to identify this as the contract he signed. It is limited.

The Witness: The one I returned unsigned.

(Testimony of Joseph Cargial McCommon.)

Q. By Mr. Bertram: The handwriting on the bottom and which is continued over to the back page, whose handwriting is that?

A. It is mine.

Q. Is that your signature (indicating)?

A. Yes.

Q. After writing that notation and affixing your signature, did you send this in to the company?

[90]

A. I did.

Mr. Bertram: I offer that as our next exhibit.

Mr. Sandmeyer: I object to that upon the grounds heretofore stated, that it is incompetent, irrelevant and immaterial, and particularly that they are precluded from showing any individual instance by the order of this court requiring a bill of particulars. The matter was not specifically stated nor was this witness's name given nor any reference made to such individual. And upon the further ground it is just one isolated instance and this man, it is in evidence, quit over a year ago. It would have no relevancy to this case.

The Court: I will admit it. An exception is allowed the defendant.

The Clerk: That will be Plaintiff's Exhibit 7 into evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 7, and was received in evidence.)

(Testimony of Joseph Cargial McCommon.)

PLAINTIFF'S EXHIBIT No. 7

June 25, 1942.

Mr. Joseph C. McCommon

Dear Sir:

A few days ago the Supreme Court of the United States rendered a decision placing an interpretation on the Fair Labor Standards Act sustaining our interpretation and arrangement as set forth in a letter to our field employees dated December 21, 1938. The Supreme Court says: "Employment contracts providing for basic hourly rate of pay higher than wage required by Act, for overtime compensation at not less than one and one-half times such basic rate, and guaranteeing to employee the wage he received before Act are not invalid."

About the first of this year, the Wage and Hour Division of the Department of Labor advised us that under its interpretation the above plan which we had adopted would not meet the requirements of the Act. In order that we might avoid litigation, we agreed to comply with the Act as interpreted by the Wage and Hour Division of the Department of Labor, and on March 1, 1942, we put into effect the irregular work week plan demanded by the Wage and Hour Division of the Department of Labor.

The arrangement which we put into effect in December, 1938, and which remained in effect until March 1 of this year has proven by experience to be by far the most satisfactory arrangement, for

(Testimony of Joseph Cargial McCommon.)

both our Company and the employees. The peculiar nature of our business makes it very unsatisfactory to our employees and to our Company, if we should be forced to pay our employees on a strictly hourly basis. Also, the irregular work week plan is very confusing and tends to create dissension and cause an unhealthy condition between the employer and the employees. Your Company has, therefore, concluded that the arrangement which we maintained in effect from December, 1938, until March 1 of this year, is by far the most satisfactory arrangement for our field employees. We, therefore, are returning to our original agreement of employment beginning July 1, 1942.

In order that there may be a definite understanding as to your contract of employment, we advise that from and after July 1, 1942, your basic rate of pay will be 43c per hour for the first 40 hours each week and that for time over 40 hours each week, you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $46.15.

Yours very truly,

HALLIBURTON OIL WELL CEMENTING COMPANY

By ERLE P. HALLIBURTON

President.

EPH:ek

(Testimony of Joseph Cargial McCommon.)

I hereby acknowledge the arrangement as above set forth to be my understanding of the terms and conditions of my employment and I agree to same.

Dated this ..... day of July, 1942.

.....

[Written in longhand]:

I do not agree that my job here should be classed as irregular work week and never have the job is just to much for one man to do in a 40 Hr week, but as I see it that is no excuse to classify it as a irregular work week. I am not crying for over time pay all I want is a fair salery in return for the work worked involved. I have ask for an adjustment of wages a No. of times in the past 2 yrs but have got no consideration what ever. if this job (taken evey ting in consideration) is not worth $225.00 per mo. it is not worth 30 cents. I have give the job the best I have, tried to hold the cost to a minimum and will continue to do so as ~~long~~ as I am here, but I do feel the company ~~can~~ should meet me half way. I do not agree with the terms of this contract (in ~~their~~ its present form of basic pay) so am Returning same unsigned.

Yours Truly

J. C. McCOMMON

[Endorsed]: Filed 5/17/44.

Q. By Mr. Bertram: I show you Government's Exhibit No. 8, for identification, and ask you if you recognize that?

(Testimony of Joseph Cargial McCommon.)

A. I do.

Q. Was that exhibit offered to you by the company subsequent to the time in which you returned to the company the form of Exhibit 7?

A. This one followed the other one.

Q. Is this handwriting on the bottom of the contract [91] in your handwriting?

A. It is.

Q. Is that your signature (indicating)?

A. That is right.

Mr. Bertram: I offer that as the government's exhibit next in order.

Mr. Sandmeyer: To which the defendant objects on each and all of the grounds stated in its objection to Plaintiff's Exhibit 7.

The Court: The objection is overruled. An exception is allowed the defendant.

The Clerk: Plaintiff's Exhibit 8 into evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 8, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 8

EMPLOYMENT CONTRACT

This Agreement, made and entered into this 16th day of October, 1942, between Halliburton Oil Well Cementing Company, a corporation, of Duncan, Oklahoma, hereinafter referred to as "Employer" and Joseph C. McCommon, of Bakersfield, California, hereinafter referred to as "Employee."

(Testimony of Joseph Cargial McCommon.)

Witnesseth

Whereas, Employer is engaged in the manufacture and sale of oil well equipment and other manufactured products and in the furnishing of special oil well services such as cementing, acidizing, electrical logging, sand testing and the servicing of various oil well specialty tools and devices, and

Whereas, Employee desires to enter the employ of the Employer, or is at this time so employed, and it is the desire of both Employer and Employee to negotiate or re-negotiate a contract of future employment.

Now, Therefore, the Employer and Employee mutually covenant and agree as follows:

Employer agrees to employ Employee as a Mechanic and to pay Employee for his services a regular basic rate of 50 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $53.08 for each workweek.

Employee agrees to enter the employ and service of Employer and agrees to perform any work which may be assigned to him by the Employer in connection with any of the activities in which Employer is engaged and that he will perform such work in a careful, prudent and workmanlike manner to the

(Testimony of Joseph Cargial McCommon.)

best of his knowledge, skill and ability and Employee agrees to accept as full compensation for such work the wages herein set forth.

Employee consents and agrees that during the term of his employment under this contract he will, in connection with the performance of his work, submit himself to the direction, supervision and control, as a special employee, of those with whom Employer may contract to furnish special services and equipment in connection with Employer's activities.

Employee agrees that Employer may make such deductions from Employee's wages as Employee may from time to time authorize and such other deductions as may be required of Employer by law.

It is mutually agreed that in the event Employer should desire to increase Employee's wages Employer shall notify Employee of the increased basic hourly rate of pay and the increased guaranteed weekly minimum salary which shall be increased in proportion to the basic hourly rate increase and such increased basic hourly rate and guaranteed minimum weekly salary shall be substituted for the basic hourly rate and guaranteed minimum weekly salary herein provided and the terms and conditions of this contract shall in all other respects remain in full force and effect.

This contract may be terminated at any time at the option of either the Employer or the Employee upon notice to the other party of intention to exercise such option.

(Testimony of Joseph Cargial McCommon.)

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

HALLIBURTON OIL WELL
CEMENTING COMPANY.
By ERLE P. HALLIBURTON
President
J. C. McCOMMON
Employee

[Written in longhand]:

Nov. 21—1942

I do hereby agree to work as much as 48 hr per week for basic pay mention above, and do not agree to work as much as 84 hr per week, but will keep Equept running to best of my ability.

J.C.M.

[Endorsed]: Filed 5/17/44.

Q. By Mr. Bertram: Subsequent to returning that contract with the addition to it, which you had inscribed, did you receive any further contracts from the company?

A. That there was the last contract.

Q. Did you have any further correspondence or communication with the company with respect to signing contracts other than that?

A. I had a letter from Erle P. Halliburton himself informing me unless I did sign the contract by December 15th my services would be terminated.

Mr. Bertram: Mr. Clerk, will you mark this for identification? [92]

(Testimony of Joseph Cargial McCommon.)

The Clerk: Plaintiff's Exhibit 9, for identification.

(The document referred to was marked as Plaintiff's Exhibit No. 9, for identification.)

Q. By Mr. Bertram: I show you Plaintiff's Exhibit 9, for identification, and ask you if you recognize that?

A. I do.

Q. Will you state what it is?

A. That was the letter I received from, copy of the letter I received from Erle P. Halliburton informing me——

The Court: You do not need to state what is in the letter.

Q. By Mr. Bertram: You don't have to state what it is, what in informs you. Referring to the second page of this exhibit for identification you will note there appears to be a handwritten signature of Erle P. Halliburton. Do you recognize that?

A. I do.

Q. Is that the signature of Mr. Halliburton?

A. That is right.

Mr. Bertram: If the court please, there is a handwritten pencil notation on the bottom of this second page which forms no part of the exhibit. It was written in some time after that. Upon offering this I would like to detach that part. It has no relevancy to this case whatsoever.

The Court: All right.

Mr. Bertram: I will offer this as plaintiff's exhibit [93] next in order.

(Testimony of Joseph Cargial McCommon.)

Mr. Sandmeyer: To which the defendant objects upon each and all the grounds contained in the objections to Plaintiff's Exhibit 7. And upon the ground it is incompetent, irrelevant and immaterial. It tends to prove no issue in this case.

The Court: I am going to admit it in evidence, but I do not see it helps the court very much. It is negotiations between this witness and the Halliburton Company for employment. They just disagreed. Also, the company states that all of the other men employees in the field have signed similar contracts and they are asking this witness to reconsider his decision and give the reasons for it.

The company says, "We are, also, convinced that such an arrangement is fair and more equitable to the employee. It was for this reason that we prepared the form of contract which we offered to you and which has been signed by every other field employee without any objection and without any suggested amendment by any of them.

"Our records show that during the past you have worked an irregular or fluctuating number of hours per week, sometimes working more than 48 hours per week and sometimes less than 48 hours per week. The company cannot afford to pay you a salary of $230.00 per month for a work week of not to exceed 48 hours and at the same time guarantee you the [94] same minimum weekly wage in the event you should work less than 48 hours.

"We are, therefore, unwilling to accept the contract which your returned with the change which

(Testimony of Joseph Cargial McCommon.)

you have made. If you wish to reconsider the matter and sign the contract in the form originally submitted, if you will so advise me, I will have another contract sent you for your signature. If you do not wish to sign the contract in the form submitted, we regret that it will be necessary to terminate your services as of December 15, 1942.

"You will please advise me what your further wishes are regarding the matter.

"Very truly yours,

"Erle P. Halliburton."

That is just merely an employee who decides he does not care to accept the terms of the contract. I will admit it in evidence.

The Clerk: Plaintiff's Exhibit 9 into evidence.

(The document referred to was marked as Plaintiff's Exhibit No. 9, and was received in evidence.)

(Testimony of Joseph Cargial McCommon.)

PLAINTIFF'S EXHIBIT No. 9

Erle P. Halliburton, President
Jno. C. Halliburton, Vice-President
A. D. Stoddard, Vice-President
C. P. Parsons, Vice-President
Jay Taylor, Vice-President
L. D. Campbell, Secretary-Treasurer
Hugh H. Leonard, Ass't Sec'y-Treas.

Halliburton
Patented Process
Oil Well Cementing Co.
Duncan, Oklahoma
December 3, 1942

[Stamped]: Received Jan 5, 1943. W & H Division, Los Angeles, Calif.

Mr. James C. McCommon,
Halliburton Oil Well Cementing Company,
Box 417,
Bakersfield, California.

Dear Sir:

The employment contract dated October 16, 1942, tendered you for your acceptance or rejection, has been returned signed by you but containing an amendment which reads as follows: "Nov. 21—1942. I do hereby agree to work as much as 48 hr. per week for basic pay mention above, but do not agree to work as much as 84 hr. per week, but will keep equipt running to best of my ability. J.C.M."

Because the duties of our field employees are

(Testimony of Joseph Cargial McCommon.)

such that they are required to work an irregular or fluctuating number of hours per week, depending upon the necessities of the business, we are convinced that they would all prefer to be paid on a monthly salary basis rather than on an hourly basis. We are, also, convinced that such an arrangement is fairer and more equitable to the employee. It was for this reason that we prepared the form of contract which we offered to you and which has been signed by every other field employee without any objection and without any suggested amendment by any of them.

Our records show that during the past you have worked an irregular or fluctuating number of hours per week, sometimes working more than 48 hours per week and sometimes less than 48 hours per week. The Company cannot afford to pay you a salary of $230.00 per month for a workweek of not to exceed 48 hours and at the same time guarantee you the same minimum weekly wage in the event you should work less than 48 hours.

We are, therefore, unwilling to accept the contract which you returned with the change which you have made. If you wish to reconsider the matter and sign the contract in the form originally submitted, if you will so advise me, I will have another contract sent you for your signature. If you do not wish to sign the contract in the form submitted, we regret that it will be necessary to terminate your services as of December 15, 1942.

(Testimony of Joseph Cargial McCommon.)

You will please advise me what your further wishes are regarding the matter.

Very truly yours,

ERLE P. HALLIBURTON

Erle P. Halliburton

EPH:bb

cc: Mr. J. Elmer Lacy.

[Stamped]: Received Apr. 7, 1943.

[Endorsed]: Filed 5/17/44.

The Court: You cannot compel a man to work if he does not want to, if he does not care to accept the compensation; he has that right.

Q. By Mr. Bertram: Did you terminate your employment with the company shortly after the receipt of this letter? [95]

A. I received my final check the 19th of December.

Mr. Bertram: If your Honor please, we conceive the importance of this to be in the statement by Mr. Halliburton, which I will read, "We are convinced they would all prefer to be paid on a monthly salary basis, rather than on an hourly basis."

I have no further questions.

Mr. Sandmeyer: We call the court's attention to our position. They are talking about this contract which specifies the hourly rate and the weekly guarantee, in which the monthly equivalent was this $230.00.

The Court: I say it does not affect it very much. They did not agree. The witness had the right to

(Testimony of Joseph Cargial McCommon.)

accept the contract or the right to object to the contract. If he could not make a deal with the company to get $1,000.00 a week, that is up to him. It is entirely a matter of contract between this witness and the company. He just said in that letter he did not care to work under those terms. He had that right. The company had the right to state its terms, provided they did not violate the statute.

That is all. Thank you.

(Witness excused.)

Miss Williams: If your Honor please, we had some other employees to call, but we will accept your Honor's ruling, of course, made with respect to this employee, with respect to the others. We will, therefore, excuse the other [96] employees who have been called as witnesses, with your Honor's approval.

The Court: All right.

Miss Williams: The government now rests.

Mr. Sandmeyer: At this time, your Honor, we move for a dismissal of the action in the nature of a non-suit, on the ground the plaintiff has wholly failed to prove any violation of the Fair Labor Standards Act with respect to payment of overtime.

The contracts covered by the stipulation and the form which is in evidence show that the parties entered into a written contract defining their rate of pay, their hourly basis and the overtime provisions, at least one and one-half times their regular rate of pay.

The payroll records which are in evidence here as Plaintiff's Exhibit 2 show that the amounts paid to the individual employees who signed these contracts were always at least an amount equal to—and so stipulated, and it is stated in the pre-trial brief, conceded by the plaintiff and stipulated that during this entire period each of the employees received an amount at least equal to the hourly rate for each hour up to 40 hours. And plus an amount equal to one and one-half times the regular rate for all hours over 40. That is in the pre-trial statement as a stipulation. It is conceded in their brief.

Now, I might state, as stated in the pre-trial statement, [97] there is no contention made by the plaintiff that any coercion, duress or misrepresentation was exercised by the defendant in connection with the execution of these written contracts. Payment has been made in accordance therewith.

Now, the form of the contract, that is, the terms of it I submit to your Honor are no different than the contracts contained and approved by the United States Supreme Court in the case of Walling vs. A. H. Belo Corporation. That decision is binding on this court.

Now, the schedules that were introduced show nothing more than that the defendant, in each of those schedules, lived up to its contract, which contract is valid by the decision of the Supreme Court. That is all those show. They don't purport to show any more. By looking at them you can see they show nothing more.

Their title only shows they paid them in accordance with their contract, if their hours were less than 40. If that schedule shows the hours were less than 40, they had not worked enough hours to receive more than the contract, of course, it pays the regular rate for 40 hours and one and on-half times for all hours over that, no matter how many they worked.

Now, if the hours worked at the regular rate, plus the overtime rate, does not equal the guarantee, then the defendant under the terms of the contract was obligated to pay them the guarantee, which is exactly what they did. All [98] Schedule 1 shows is that in those instances where the number of hours worked at the regular rate and the time and a half rate did not equal the guarantee the defendant, nevertheless, was required by its contract to pay them the weekly guarantee.

All that Sched le 2 shows is that the defendant gave the employee the benefit of the doubt, if there is any doubt. I think it is a matter of law, that if a person has a guarantee for a period and he works a portion of a period he is obligated to pro rate that period.

For instance, in decisions which I don't have at my fingertips, but I am familiar with them, in insurance contracts where they agreed to pay disability benefits, so much a year, or so much every six months, and the insured becomes disabled and recovers from his disability before the expiration of the year, the cases hold the insurance company,

if he has been disabled eight months, must pay two-thirds of yearly disability.

In any event, the defendant gave the employee the benefit of the doubt, if there was any doubt and paid to each of the employees, where he worked less than a week, and as indicated by the record here, Plaintiff's Exhibit 2 will show the instances of why they didn't work a full week. An examination and tabulation of those will show the only three types there are, I believe; four, perhaps. That is, where a man started work in the middle of the pay period, where he quit in the middle of the pay period or where he was [99] transferred to another district, in which event he would work the full week and get his full guarantee, but only half was chargeable to the California payroll. There are very few instances where a man voluntarily took a layoff. That is, he decided he just wanted to take a trip or do something else. Naturally, the defendant was not obligated there. In those instances where that occurred in the middle of a pay period the defendant gave the employee the benefit of the doubt and paid him. It felt its obligation to pay him the pro rata portion of the weekly guarantee; and did so.

If it exceeded the amount, the product of the hours worked times straight time and time and a half, if the hours worked exceeded the work guarantee they paid the hourly rate and time and a half for the hours worked. The only time the guarantee came into play was if he did not work enough

hours to equal it, then they were obligated under the contract to pay it.

I would like to call your Honor's attention not only to the Belo decision, which is by our highest court, which expressly answers every argument or suggestion that has been made by plaintiff's counsel here, but I would like to call your Honor's attention to the case of Atlantic Company vs. Walling, which was likewise an injunctive suit, and the injunction was denied.

It was there held when the parties had entered into a written contract specifying an hourly rate that that came [100] within the Belo case.

In that case it was contended that the employer had put pressure on the employees and forced them to sign it, and if they didn't he was going to kick them out. That is, he was going to terminate their employment.

The case of Atlantic vs. Walling is a decision by the Circuit Court of Appeals of the Fifth Circuit, decided November, 1942, and is reported in 131 Fed. (2d) 518, page 521. That is cited in the first point of defendant's pre-trial brief.

In that case the Circuit Court held if the employer forced this contract on them and threatened to discharge them, if they didn't, it said that was no concern of the court. It had a right to do that if it wanted to. But, anyway, the contract was binding.

I would like to call also the court's attention to the case of General Mills vs. Williams. That is a decision by the Circuit Court of Apepals of the

Sixth Circuit, decided in December, 1942, reported in 132 Fed. (2d) 367, at page 368.

The court stated where there was a written contract between the employer and employee specifying the hourly rate and providing they would be paid at that rate for all hours worked up to and including 40, and one and one-half times that hourly rate for all hours over 40, that with a minimum guarantee the court said: [101]

> "We can conceive of no such situation, in the absence of fraud or duress or other violating circumstances which would make such a situation violate the Fair Labor Standards Act, providing the hourly rate was at least equal to the minimum,"

which all of these are. They exceeded the minimum. And the court says:

> "We can conceive of no situation where they contend that the Fair Labor Standards Act has been violated."

The same ruling has been made in Walling vs. Helmreich and Payne, a decision in the Tenth Circuit in 138 Fed. (2d) 705. Incidentally, there was more than one type of contract involved. There was one like this, and the court approved that. That was decided this last November.

There is also the case of Shepler vs. Crucible Fuel Company, a decision of the Third Circuit, decided this year in 140 Fed. (2d) 371.

In view of the decision of the Supreme Court in the Belo case, in the absence of any proof of

fraud or violating circumstances, the written agreement between the respective employee and the employer is binding. They have said that that sort of a contract is not violation.

I would be glad to read portions of the decision of the Supreme Court in so holding, but I think your Honor has probably read it. They answer every contention that has been [102] suggested here.

Upon all the grounds I move for a dismissal of the action in this case, and judgment for the defendant.

Miss Williams: If your Honor please, I would like to suggest to the court that I think it is probably very apparent to the court by this time that this is an important and possibly will become a leading case on this question.

The evidence that has been introduced in this case was not before the courts in the other cases which Mr. Sandmeyer has cited.

Now, I will be glad to proceed with the argument if the court wishes to hear me at this time.

The Court: Proceed.

Miss Williams: We are going to request, of course, we be permitted to submit briefs in this case. Would your Honor feel it would save time if all the evidence went in and we argued the matter and submitted briefs at the conclusion of the entire case?

Now, of course, I want to be guided by the court's wishes. This is a very important matter and we would like to have an opportunity to submit briefs. And we would like to argue fully on all the evi-

dence of the way in which the contract applied and the payments that were made. If the court would find it satisfactory, I think it would be much more satisfactory if we were permitted to reserve our argument until the conclusion of the case and be given an [103] opportunity to file a brief.

Mr. Sandmeyer: If I may be heard, we have a motion which we think is meritorious. Despite the contention there is something mysterious about this case, there actually isn't.

We object and will oppose the filing of briefs at the close of the case, whether it is at this time or at some later date, unless the court expressly requests it. We think this case is simple. This is not a leading cae. The Belo case was the leading case and that has been determined. All that is involved is this contract, does it fall within the terms of the decision of the United States Supreme Court? Counsel has stated that the evidence is different in this case than in the Belo case. I would like to have that pointed out.

At the pre-trial hearing a month ago we requested them to point out in what way it was different, and they declined to do so, and said the evidence was different. We have the record in the Belo case and every point that has ever been suggested in this court or outside this court was raised and determined in the Belo case. We can show the court the briefs that the Administrator filed in the Belo case, both in the Circuit Court and in the Supreme Court, and the same thing was urged there, that is, the contention that they paid the

guarantee for work weeks less than 40. They had. They tabulated and gave the number and percentages where they did that. They also gave the number and percentages [104] of instances—well, they didn't have one just like the partial work week, as I recall it.

Every contention I have heard from plaintiff's counsel in or out of court was raised by the Administrator in the Belo case and determined by the Supreme Court. We think this matter is now before the court on a motion to dismiss, and should be determined.

Miss Williams: I am prepared to proceed with the argument, if the court wishes.

The Court: Yes.

(Whereupon, further argument was had.)

The Court: I am going to deny the motion to dismiss made by the defendant and allow the defendant an exception.

We did not have a recess this morning so we will take our adjournment at this time until 2:00 o'clock.

(Whereupon, at 11:50 o'clock a. m., a recess was taken until 2:00 o'clock p. m.) [105]

Los Angeles, California,
Wednesday, May 17, 1944. 2:00 P. M.

The Court: Mr. Cross, call the calendar.

The Clerk: No. 2912, L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, vs. Halliburton Oil Well Cementing Company, a corporation, for further court trial.

Mr. Sandmeyer: Ready for the defendant.

Miss Williams: Ready for the plaintiff.

Mr. Sandmeyer: With the court's permission I would like to make a comment in about two or three sentences, not in argument of our motion to dismiss but in explanation and to avoid a possible misunderstanding with respect to the evidence that the defendant is going to offer.

I refer to the argument of counsel to the effect that the guarantee paid was only for straight time. Now, I think your Honor is familiar with the terms of the written agreement, which is that they agreed to pay them a guarantee for the straight time and overtime which was to be paid at a regular rate for the 40 hours and time and a half for the overtime. So they paid an amount for a week, assuming they paid the guaranteed amount, that would pay for the first 40 hours at straight time and for all hours over 40 no matter how many there were up to 84 at one and one-half times the regular rate.

I point out that if I correctly heard her counsel stated [106] that when they paid the guarantee

there was no overtime paid. I wish to emphasize that when they paid that amount, the guarantee, there was overtime paid for every hour over 40 at a rate not less than one and one-half times the hourly rates specified in the contract. I don't think that escaped your Honor, but I didn't want that in there.

The second thing I would like to comment upon is at the time the defendant filed its answer the issues were much broader than they presently are. Therefore, there are a number of allegations in the defendant's answer which will not have any relevancy to the period subsequent to July 1, 1942. I merely call that to your Honor's attention. I assume since they are irrelevant there will not be any finding one way or the other on them, but merely a finding they are now irrelevant.

One other thing. In the stipulation, so as to remove any question of coverage, the defendant stipulated to facts. I don't want the court to deduce from that that any statement contained in defendant's answer was not bona fidely made at the time the answer was filed. I personally signed the defendant's answer, and I am jealous of my standing before this court.

Particularly in the last sentence in paragraph III, and the latter portion of it, beginning line 11, it states:

> "Defendant does not know whether or not any oil from any well on which defendant rendered [107] services moved in interstate commerce."

I want the court to know that that statement was bona fidely made. It is now out of the case. It no longer has any pertinency. I wanted to explain to the court it was bona fidely made, notwithstanding the present stipulation which removes all question of coverage. The stipulation was entered into for the reason that defendant has always acted and has attempted to comply with the Fair Labor Standards Act, and makes no contention it is not covered.

The defense of this action is on the merits and not on that ground. It is on the ground we have complied.

I will recall Mr. Lacy.

JOHN ELMER LACY,

recalled as a witness on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

The Clerk: State your full name.

The Witness: John Elmer Lacy.

The Clerk: Take the stand.

By Mr. Sandmeyer:

Q. Mr. Lacy, you have previously testified that you are now the superintendent of the California Division or District of the Halliburton Oil Well Cementing Company? A. Yes, sir.

Q. How long have you been with the company? [108] A. 23 years.

(Testimony of John Elmer Lacy.)

Q. Continuously? A. Yes, sir.

Q. I assume you didn't start as superintendent.

A. No, sir.

Q. What positions have you occupied?

A. I started in as a truck driver and drove for about seven months, and was then a cementer for eight or nine years.

The Court: A what?

The Witness: Cementer, we call them.

The Court: Oh, yes. Cementer; I understand.

The Witness: Then I was assistant superintendent for the company. I was from then on until I was superintendent of the California Division.

Q. By Mr. Sandmeyer: That has been since July, 1940?

A. Yes, sir.

Q. Now, will you state very briefly the nature of the defendant's business in California? Possibly that has been covered somewhat by the stipulation. I think it has generally. In addition to cementing, testing and surveying oil wells, what other types of work does the company do in California?

A. Excavating, caliber survey and furnishing bulk cement to the well site, and furnishing oil base mud on the well site.

Q. How long have you been furnishing the oil base mud? A. Since the first of the year.

Q. This year? A. Yes.

Q. When you say "cementing," that includes the cementing of the casing in the hole when it is first bored?

(Testimony of John Elmer Lacy.)

A. Generally, but we also do work on work over wells.

Q. Now, you are familiar with what the men do in the California district, generally; aren't you?

A. Yes, sir.

Q. When one of the cementers is called out, you send him out to do a job on a well, he takes the company's special equipment with him?

A. Well, he drives a car or a pickup, the cementer does, and the driver takes the truck with the equipment mounted on it.

Q. If you furnish the cement you have another man drive the cement truck? A. Yes, sir.

Q. What is the practice, if there is a practice, with respect to the time that the oil well owner has them arrive at the well, with respect to the time the cementing operatiton is performed?

A. That varies according to the depth of the well and the kind of a job.

Q. A casing job is what I am talking about.

A. On a shallow well they might be ready in an hour [110] or two hours after they arrive. On a long string, known as the oil string on a deep well, they might be out there for 10 or 12 hours before they start cementing.

Q. Do you know the reason for that?

A. A lot of the operators want the equipment and the men on the location before they start in the hole with the casing.

Q. The cementing is not done until all the casing is run in the hole? A. That is correct.

(Testimony of John Elmer Lacy.)

Q. How deep are the wells in this locality in California?

A. They will vary from 800 feet to 11,000.

Q. That is two miles. Take on a 10,000-foot well, give us the approximate time or the periods that it usually takes to run the casing in a 10,000-foot well.

A. Well, it depends something on the crew and the drilling rig. It would vary from, I would say, ight to eighteen hours.

Q. All right. If the well owner or operator had such a well to be cemented and he required your men and equipment to be on the job before he started to run the casing, they would be there then from eight to eighteen hours before they started to do that job? A. Yes, sir.

Q. Do you know what these men do during that period [111] of eight to eighteen hours on the deep wells?

A. They generally do what we call set up of the outfit. That is, they hook up the steam line, if it is a steam rig. They run their water line and their discharge line and their mud lines and set up their mixer and get the special head to fit on top of the casing, get it ready; and then wait.

Q. How long would it take the men to do what you have described?

A. Oh, that depends on——

Q. Just give us the variation.

A. I would say from an hour to two hours.

(Testimony of John Elmer Lacy.)

Q. Then they would have from six to sixteen hours waiting? A. Yes, sir.

Q. What do they do during that period?

A. Well, they will probably go and eat a couple of times and maybe go to sleep in the car or maybe talk to the men around the rig. If it is near enough to come in sometimes they come back to camp. Just most any way to kill the time.

Q. You spoke about going and eating a time or two. Does the company pay for their meals when they are out on a job? A. Yes, sir.

Q. The time that is required or necessary to set up [112] this equipment that you described, is that recorded as time worked? A. Yes, sir.

Q. What about this waiting time of six to sixteen hours on the deep well, is that recorded as time worked? A. Yes, sir.

Q. Of course, this figure would be much less on shallower wells; would it not? A. Yes, sir.

Q. All right. Assume the operator or well owner has run his casing into the hole, can you describe what the cementing job is like?

A. Well, the head is placed on top of the strip of casing——

Q. Don't go into detail. Just give us a general idea of what the cementing job is like, how long it takes.

A. Well, that would depend on the amount of cement used and whether or not they used rig pumps to pump the cement down or whether the company pumps were used. It would vary from

(Testimony of John Elmer Lacy.)

30 minutes to an hour and a half to mix anywhere from 500 to a thousand sacks of cement and pump it to the bottom and up around the outside of the casing.

Q. How deep a well would it be that would require that time?

A. Oh, they vary. I would say on an average well of six or seven thousand feet. [113]

Q. Is the cementer then ready to come back to the plant?

A. They wash the cement out of their pumps and disconnect the outfit and load up the mixer and they are ready to come back; get the ticket signed.

Q. The driver's time to the well location and return, is that recorded as time worked?

A. Yes, sir.

Q. When they get back to the plant, what do they do?

A. It depends on whether it is day or night. If it is in the daytime they might go home. They might decide they needed to go, what we call going through the pump. If they have a valve missing they will replace it. Or maybe just sit around the camp for an hour or two and go home, or maybe go right home. If it is at night the chances are they will go home.

Q. If a man comes in off of a cementing job around midnight, when does he usually report back to the plant?

A. Sometimes he will report back the next morning, and again he will come around at noon, and maybe not show up at all that day.

(Testimony of John Elmer Lacy.)

Q. Do you dock him or reduce his pay if he doesn't show up that day? A. No, sir.

Q. What time do they usually show up in the morning if they haven't been out at night? [114]

A. They generally show up around 8:00 or 9:00 o'clock.

Q. Is there any particular time they have to be there? A. No, sir.

Q. Assuming that they came to the plant and there was no job up for them to do and their equipment was in shape, what would these men do?

A. Well, some of them would sit around the camp and some of them might go home, or some of them might say they were going over town and if we wanted them we could locate them at such and such a place, or they would call in in a couple of hours. And they might say they were going out to play golf, or just various things.

Q. Well now, if they stayed around the plant and actually worked on their equipment would that be recorded as time worked? A. Yes, sir.

Q. To what item would that be charged?

A. Maintenance.

Q. Suppose they reported at the plant in the morning, as you have described, and the equipment was in shape and they sat around for a half a day or a whole day, would that be considered time worked or recorded as time worked?

A. Well, I think some of them put it down as time worked. But I couldn't say whether it really should be or not.

(Testimony of John Elmer Lacy.)

Q. I mean what is the practice. [115]

A. I think most of them put it down as time worked.

Q. If they are there at the plant?

A. If they are there at the plant.

Q. Even though they are not doing anything?

A. Yes, sir.

Q. And to what do they charge that, when they do that?

A. That generally goes down as maintenance.

Q. If they are there at the plant without doing any work, are they docked or have their pay reduced for that time so spent? A. No, sir.

Q. Suppose they went uptown or went out and played golf all afternoon, would they be docked or have their pay reduced? A. No, sir.

Q. Have you issued any instructions about that?

A. Yes, sir.

Q. As early as July of 1942, that early?

A. Before that, I believe.

Q. State generally what your instructions were in that regard.

A. I told them if they were not up the night before they should report to their camp in the morning, and if there is no work to perform, why, they could feel free to do what they pleased. Just so they kept the foreman informed where he could get in touch with them in case there was some work [116] to be done. That they could feel free to play golf or go to the movies or go home, or do what they wished.

(Testimony of John Elmer Lacy.)

Q. Just so that the foreman would know where to reach them by telephone in case a job came up?

A. Yes, sir.

Q. In general have those instructions been followed? A. In most cases, yes.

Q. Some people come and stay there, anyway?

A. Yes, sir.

Q. Now, I think it has been testified or stated. You may state, are the men here entitled to a day off a week? A. Yes, sir.

Q. If you have a busy week and they don't get a day off that week, are they permitted to accumulate it so as to have two the next week?

A. Yes. They have had as much as four days at a time off. I try to get them not to let it accumulate over two days. I try to give them two days off in two weeks.

Q. That is, in the past there have been instances where they would go three weeks without a day off and take four off in one week? A. Yes, sir.

Q. You say you instructed them not to accumulate more than two?

A. If it can be arranged that way, or possible.

Q. As I understand it they were supposed to put a D. O. [117] down when they have their day off?

A. Yes, sir.

Q. When they took their day off did they always put a D. O. on their daily time reports?

A. No, sir, quite often they just put a zero. A zero could mean a day on which they were subject to call, but no work performed.

(Testimony of John Elmer Lacy.)

Q. Have you instructions about that?

A. Yes.

Q. What were your instructions?

A. I told them on their day off to write "Day off" or "D. O." so we would know whether or not they had their day off.

Q. If an employee showed up at the plant in the morning, but there was no work to be done and he either sat around—let's assume instead of sitting around he went home, what would he record for that day as to the number of hours worked?

A. Zero.

Q. Now, it has been testified that zero meant that he actually did no work, but that he was subject to call on that day? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. On his day off he does no work, but he is subject [118] to call? A. No, sir.

Q. That is, he doesn't have to worry about the telephone ringing, telling him to come down on that day?

A. No. There have been instances where we have called a man back on his day off.

Q. What is your practice about that, as a general thing?

A. We try to let him have his day off.

Q. Without being bothered? A. Yes, sir.

Q. Now, suppose a man should be ill for several days in a row, do you dock him for those days?

A. No, sir.

Q. You do not?

(Testimony of John Elmer Lacy.)

A. No, sir. To my knowledge I have never docked a man for being ill.

Q. Since you have been in California?

A. Yes. That is, unless it was over a long period of time. We had one man that was off a year, and we made an agreement with him that we paid him, I believe, his full salary for two or three months and paid him half salary for about nine months.

Q. He wasn't carried on the payroll? You made a separate agreement with him, or was he carried on the payroll?

A. I believe he was. I am not positive about that. [119]

Q. It doesn't make any difference. Now, suppose he is sick for two weeks?

A. We pay him.

Q. Do you pay him the full guaranteed amount?

A. Yes, sir.

Q. Suppose he has a death in his family and goes to a funeral, what about that; do you dock him if he takes time off for that? A. No, sir.

Q. Suppose he has a death in his family——

A. We have docked them where they were gone more than two weeks.

Q. But suppose a man has a death in the immediate family and he goes back East to the funeral and is gone a week? A. We pay him.

Q. The whole week?

A. Yes, sir. We pay him up to two weeks.

(Testimony of John Elmer Lacy.)

Q. You have paid up to two weeks?

A. Yes, and paid up to three weeks. We try to make a rule of two weeks.

Q. That is if he attends a funeral of an immediate member of his family? A. Yes.

Q. When do you dock them or reduce the amount of their weekly guarantee? [120]

A. Well, if they ask for time off or, in several instances we have had men that wanted—had a week's vacation coming and they wanted to take two weeks. We dock them for the extra week. There have been instances where a man would want off for a week, for some reason; he would ask off for a week, so we would dock him.

Q. If an employee, a new employee that is, was hired in the middle of the pay period and his hourly rate and overtime rate was less than pro rata amount of his weekly guarantee, what would you pay him? A. How was that question again?

The Court: Read the question.

(Question read.)

The Witness: We would pay him his weekly guarantee.

Q. By Mr. Sandmeyer: Pro rate amount of the weekly guarantee?

A. Yes, sir.

Mr. Sandmeyer: We ask this booklet be marked Defendant's Exhibit A, for identification.

The Clerk: Defendant's Exhibit A, for identification.

(Testimony of John Elmer Lacy.)

(The document referred to was marked as Defendant's Exhibit A, for identification.)

Q. By Mr. Sandmeyer: Mr. Lacy, I show you a booklet marked Defendant's Exhibit A, for identification, and ask you to state what that is.

A. It is a daily time book. [121]

Q. Are those furnished to each of the field employees? A. Yes, sir.

Q. I notice in the inside of the front cover there are some instructions with respect to keeping the record. Those were printed at the Duncan office and sent out to you for distribution?

A. Yes, sir.

Q. During the period here involved, from July, 1942 to the present time, have those daily time reports or ones similar to those been in use by the field employees? A. Yes, sir.

Q. What are your instructions with regard to that, or the practice?

A. Instructions are to put down all time worked. If there are duties performed that are not listed here, why to write them down.

Q. Are they to make one of those out every day?

A. Yes.

Q. The original and a duplicate?

A. Yes.

Q. They are turned in to the respective camps, are they? That is, at Norwalk or Avanel or Montalvo? A. Yes, sir. [122]

Q. And then do they come to your office in Los Angeles? A. Yes.

(Testimony of John Elmer Lacy.)

Q. From those daily time reports do you make up the payroll? A. Yes, sir.

Q. Who actually makes out the daily time reports? I mean is it the employee or his foreman?

A. It is the employee. The foreman signs them.

Q. Suppose one of these men is out on a job for a couple of days, would there be a foreman around there to know how many hours he worked?

A. No, sir.

Q. That is, each employee is his own timekeeper.

A. Yes, sir.

Q. It is from the daily time reports that the payroll, with respect to the number of hours worked, is made up? A. Yes, sir.

Mr. Sandmeyer: We offer this in evidence.

The Court: It will be received.

The Clerk: Defendant's Exhibit A into evidence.

(The document referred to was marked as Defendant's Exhibit A, and was received in evidence.)

DEFENDANT'S EXHIBIT No. A

DAILY TIME REPORT INSTRUCTIONS

General:

The Purpose of the time log is to show in graph form the hours worked by the employee during each day. Each item is divided into intervals of 30 minutes (no lesser interval should be shown) and lines are to be drawn indentifying the time devoted to the various activities listed in the headings.

(Testimony of John Elmer Lacy.)

The report is to be prepared in duplicate and both copies are to be turned in to the local office each day. As this report provides the information for preparing the pay roll, it is essential that (1) regardless of the number of hours, a time report be turned in for each day during which an employee works (2) the time report be accurate so that it will correctly show by activity the number of hours actually worked each day.

Explanation of Headings:

1. Maintenance Work (Equip., Camp, etc.)

Indicate here all time devoted to working on equipment, camp building repair, etc. If working on equipment, write the vehicle number in the space provided, and if engaged in other work, write a very brief explanation in the same space.

2. On Road Driving.

Indicate here all time elapsed actually driving to and from job, including stops of less than 30 minutes.

3. Incidental Stop.

Indicate here the time in excess of 30 minutes during which an interruption of the trip occurs and the time elapsed during the stop is Work Time. Do Not Show Stops in Excess of 30 Minutes for Meals, Sleep or Other Personal Reasons.

4. Waiting on Location (Idle Work Time Only)

Indicate here only the idle time during which an employee is on location and the interval of time is not sufficient or facilities are not available for an

(Testimony of John Elmer Lacy.)

employee to engage in eating, sleeping or other activities of personal nature. Idle time while voluntarily on location may not be considered work time. If the employee while on location is engaged in maintenance work on the equipment or in activity connected with running the job, such time is to be shown opposite the appropriate heading.

5. Running Job

Indicate here all time while on location and actually performing work in connection with running the job, including hooking-up, running job, breaking-down, etc. Be sure to list Ticket Number if actually running job.

6. Other Work

Indicate here all working time which is not covered by any of the other headings.

HALLIBURTON OIL WELL CEMENTING COMPANY
DAILY TIME REPORT

Date..... Signed.....
Employee

Location..... Occupation.....
Classification Department Vehicle No.

	MID 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 MID	Total Hrs
1 Maintenance work (Equip., Camp, etc.) (Explain).....		
2 On Road Driving		
3 Incidental Stop (Explain).....		
4 Waiting on Location (Idle Work Time Only).....		
5 Running Job (Ticket No.....)		
6 Other Work (Explain).....		

Authorized by..... Approved by..... Total Hours
Supervisor

[Endorsed]: Filed 5/17/44.

(Testimony of John Elmer Lacy.)

Q. By Mr. Sandmeyer: Now, the company does testing. There are several kinds of testing, I assume. A. Yes, sir. [123]

Q. We won't go into those in detail. Perhaps someone else will explain it. There is waiting time in connection with testing; is there?

A. Yes, sir.

Q. And that is recorded as time worked?

A. Yes, sir.

Q. Now, is the work done by the defendant company Halliburton Oil Well Cementing Company, the number of jobs they do, is that uniform from week to week? A. No, sir.

Q. Describe the true situation.

A. Well, some weeks there might not be but very few jobs up, and another week there will be quite a number of jobs up. They vary at each camp from maybe two or three days when there will be no work up, and the next two or three days or week there will be quite a lot of work.

Q. That would keep the men extra busy.

A. Yes.

Q. Is it in the busy weeks that the long hours are worked? A. Yes, sir.

Q. Do you have any control as to the volume of work you may do in a particular week?

A. No, sir.

Q. Your customer is the well owner or the operator or driller? [124] A. Yes, sir.

Q. If he asks you to do a cementing job or a

(Testimony of John Elmer Lacy.)

testing job, do you have any control as to the day or hour when that job shall be done?

A. No, sir.

Q. You have to do it when he says it should be done? A. Yes, sir.

Q. If you already had 14 jobs that took a week to do and somebody wanted you to do another, could you ask him to postpone it until the next week? A. No, sir.

Q. What is the situation with respect to changing crews on a job?

A. Well, we have never——

Q. Say, a cementing job, cementing crew.

A. We have never made a practice of changing crews. One crew goes out and, as a rule, it is their equipment, it is the equipment they are familiar with. They go out on a job and they generally stay on it until the job is completed, unless it is a long pump job or something, and then they do send out a crew and relieve that crew and let them come in.

Q. Have you had any instructions or requests for statements from the well owner or operator with respect to changing crews?

A. No, I don't know as we have.

Q. Well, you do a cementing operation with special tools; [125] do you not? A. Yes, sir.

Q. When a particular man has operated that tool in the hole with respect to cementing some—attempting to cement off some leaks, or something,

(Testimony of John Elmer Lacy.)

would it be practical to substitute or relieve him and put a new man on there? A. No, sir.

Q. Why not?

A. Well, he knows the pressures and he has discussed it with the operator, and they have their program outlined and they try to carry through with it.

Q. When you are trying to cement a leak in a hole a mile and a half deep, you can't see what you are doing; can you? A. No, sir.

Q. That operation depends a whole lot on the feel of the tool on top of the ground; doesn't it?

A. Yes, sir.

Q. As to what happens?

A. You have quite a number of things that enter into it. You have your pressures and your temperatures and your time element.

Q. If a new man came on the job he wouldn't know all that past history. A. No, sir.

Q. Well now, these operators such as ones that operate [126] your cementing equipment, and these especially designed tools for doing a cementing job inside the casing, and these testers, are they common labor or are they skilled men?

A. They are skilled men.

Q. Before you let a man be one of these operators, do you put him through a course of training?

A. Yes, sir, several months at least. It depends on his previous history. If he was a driller, in other words, if he had run a drilling rig, why, you could

(Testimony of John Elmer Lacy.)

put him out as a tester or operator much sooner than you could if you took a man that had no experience in the oil fields.

Q. But all of them, even though they have been drillers, require training? A. Yes, sir.

Q. What is the situation with respect to such men being available? That is, trained men to put on a job, if you had an extra amount of work, are there such skilled men available?

A. There are none available, no, sir.

Q. Suppose you should have a slack period, that is, when there are few jobs to be done, and that continued for some weeks or months, do you lay the men off during that slack period? A. No, sir.

Q. Would it be economical to do that?

A. No, sir. [127]

Q. Why not?

A. Well, when business picked up you would have to have men to operate the various tools and cementers.

Q. Could you get them?

A. No, sir, you couldn't get them.

Q. That is, you have to carry these skilled men over the slack period in order to have them available when you do have work? A. That is right.

Q. Have you had periods where a man would go two or three weeks without doing a job?

A. Yes, sir.

Q. Here in California? A. Yes, sir

Q. Does the Halliburton Oil Well Cementing Company drill wells? A. No, sir.

(Testimony of John Elmer Lacy.)

Q. Has it at any time, to your knowledge?

A. No, sir.

Q. Do you contract to drill them?

A. No, sir.

Q. Have you ever, to your knowledge?

A. Halliburton Oil Well Cementing Company?

Q. Yes. A. No, sir.

Mr. Sandmeyer: I ask to have this document marked [128] Defendant's Exhibit B for identification.

The Clerk: Defendant's Exhibit B for identification.

(The document referred to was marked as Defendant's Exhibit B, for identification.)

Q. By Mr Sandmeyer: Mr. Lacy, I show you Defendant's Exhibit B for identification, purporting to be a letter dated June 25, 1942, addressed to you at Los Angeles, and purportedly signed by Erle P. Halliburton. Are you acquainted with Mr. Halliburton's signature? A. Yes, sir.

Q. Is that it (indicating)? A. Yes, sir.

Q. Did this letter come from your file? I mean did you receive that letter? A. Yes, sir.

Q. Shortly after the date it bears?

A. Yes, sir.

Mr. Sandmeyer: We offer this in evidence.

Miss Williams: No objection.

The Clerk: Defendant's Exhibit B into evidence.

(The document referred to was marked as defendant's Exhibit B, and was received in evidence.)

DEFENDANT'S EXHIBIT No. B

Erle P. Halliburton, President
Jno. C. Halliburton, Vice-President
A. D. Stoddard, Vice-President
C. P. Parsons, Vice-President
Jay Taylor, Vice-President
L. D. Campbell, Secretary-Treasurer
Hugh H. Leonard, Ass't Sec'y-Treas.

HALLIBURTON
Patented Process

OIL WELL CEMENTING CO.
Duncan, Oklahoma

June 25, 1942

Mr. J. Elmer Lacy
Los Angeles, California

Dear Sir:

Since the Supreme Court of the United States recently held that an employer and his employees may agree on any hourly rate of pay which equals or exceeds the minimum 30c per hour provided by the Act for regular time and for overtime compensation at not less than one and one-half times such basic rate and the employer may guarantee to pay the employee a minimum weekly wage for regular time and for such overtime as the necessities of the business may demand, we have prepared and are sending you under separate cover forms of contract which the Supreme Court held valid.

These contracts will permit the Company to guarantee its field employees a minimum weekly wage which may be paid either weekly or as monthly salaries. The employe will receive his minimum weekly wage even when the necessities of the business do not require the employee to work more than an few hours in a given week. The rates fixed in these contracts will permit an employee to work eighty-four hours per week to earn the fixed minimum weekly wage. In the event an employee works more than eighty-four hours in any work week, he will be paid additional compensation at the regular overtime hourly rate.

I am confident this arrangement will be more satisfactory to the employees as it will permit them to operate on a family budget to meet the commitments for payments on homes, automobiles, insurance etc.

You will please present these contracts immediately to each employee in your district for his acceptance and signature. If an employee does not agree to the provisions of this contract, you will please have him write his objections on the contract and return the same immediately. Any new employee, or old employee who has been transferred from one of the other departments and is given employment to work in the field, must sign one of these contracts. Employees such as warehousemen and others whose duties are of such a nature as will make it advantageous to the employee, will be paid on a strictly hourly basis without the advantage of a guaranteed weekly minimum salary.

It will not be possible to get these contracts executed prior to July 1, but they are to be effective as of that date and should be signed and returned at the earliest possible date, and in time for them to be used for the payroll covering the first half of July.

The decision of the Supreme Court we feel definitely settles our Wage and Hour problems both for the past and future, and we are happy that our original plan and arrangement has been sustained.

Yours very truly,

ERLE P. HALLIBURTON

EPH:ek

[Endorsed]: Filed 5/17/44.

Mr. Sandmeyer: Will counsel for the plaintiff stipulate that the mimeographed letter dated June 30, 1942, addressed to Division superintendent and having the mimeographed signature of John C. Halliburton was sent out by [129] the home office of the defendant at Duncan to the division superintendent Mr. Lacy, on or about the date it bears?

Miss Williams: Yes, Mr. Sandmeyer.

Mr. Sandmeyer: We now offer that as Defendant's Exhibit C.

The Court: It is admitted.

The Clerk: Defendant's Exhibit C into evidence.

(The document referred to was marked as Defendant's Exhibit C, and was received in evidence.)

DEFENDANT'S EXHIBIT No. C

Erle P. Halliburton, President
Jno. C. Halliburton, Vice-President
A. D. Stoddard, Vice-President
C. P. Parsons, Vice-President
Jay Taylor, Vice-President
L. D. Campbell, Secretary-Treasurer
Hugh H. Leonard, Asst.Sec'y.-Treas.

HALLIBURTON
Patented Process

OIL WELL CEMENTING CO.
Duncan, Oklahoma

June 30, 1942

To Division Superintendent

Dear Sir:

Enclosed is material relating to the placing in effect of the contract arrangement referred to in Mr. Erle P. Halliburton's letter of June 25, 1942. The material is listed and explained under separate headings.

Employment Contract

An employment contract has been prepared with the name, basic hourly rate, and guaranteed weekly salary filled in for each employee in your Division who, in accordance with the pay roll for the first half of June, is to work under the "Contract Plan." The basic hourly rate has been fixed so that each employee under the "Contract Plan" may work a total of 84 hours in any single workweek before receiving compensation in excess of the guaranteed

weekly salary. The minimum monthly salary equivalent to the guaranteed weekly salary in the contract may readily be determined from the Pay Roll Chart inclosed.

For the majority of employees in your Division, the guaranteed weekly salary has been determined by merely reducing each employee's present monthly salary to a weekly figure. The exceptions are noted below.

Drivers

(1) In order to permit 84 hours of work in a single week under a contract, the employee must be guaranteed a minimum of $31.80 a week which is equivalent to a monthly salary of $137.80 so the minimum pay for drivers is $137.80 a month.

(2) For each driver now earning $155 or more a month as regular salary, the contract provides for a guaranteed minimum of $165.

(3) The contracts for drivers provide for only three separate salary brackets, $137.80, $150.00 and $165.00. There may be instances in your Division where a few drivers are earning more than the maximum bracket provides. If you feel that it is advisable to offer such drivers contracts in excess of $165.00, it is necessary to secure permission from the President of the Company or the Vice-President in charge of field operations.

Field Mechanics

The contracts for field mechanics working irregular hours have been drawn so that the

guaranteed salary is equal to the amount which each mechanic was earning prior to March 1, 1942. In other words, the 9% decrease of March 1 has been restored.

The contracts have been filled in from the information on the first half of June pay roll and undoubtedly there will be some changes caused by transfers, separations and possibly some salary adjustments. For this reason, a supply of blank contract is enclosed which may be filled in by your office. The basic hourly rate and the guaranteed weekly salary may be determined from the Pay Roll Chart. On the Pay Roll Chart, on the line with the monthly salary desired, the amount listed under Column (2) is the guaranteed weekly salary to be placed in the contract and on the same line under Column (3), the basic hourly rate is listed. The overtime rate under Column (4) has no practical use unless the employee works in excess of 84 hours in a single workweek.

Please bear in mind that a contract must be secured from each subject employee working under the "Contract Plan" and a revised contract must be signed at each change in salary. A Contract is not to be signed by an employee if he does not agree to the terms of the contract without modification or change. In other words, the contract must be accepted as it is written or returned unsigned with the employee's objections.

Explanatory Mimeographs

A wage and hour mimeograph entitled "Mimeo-

graph No II" has been prepared outlining the procedure to be placed in effect July 1, 1942. The supervisory personnel in your Division should be thoroughly familiar with the information in the Mimeograph so that the wage and hour arrangements and procedure may be correctly explained to all the affected employees.

List of Contracts

A list, in duplicate, of the contracts for employees in your Division is enclosed. Please fill in the information requested as soon as the contracts are signed, add any names not listed, remove names of employees separated or transferred, note any changes in particular contracts which may be made in your office and return one copy of the list to this office to be used in checking the pay roll for the first half of July.

As outlined in the mimeograph, operators will begin preparing daily time reports, effective July 5, 1942 and an additional supply of time report books will probably be required by your Division. Please estimate as accurately as possible the number of books that are now in your Division and order sufficient additional books so that your total supply, on hand and additional orders, will fill your requirements for approximately two months. It is important that you do not overstock as it is possible that the forms may be simplified in the near future. If you notify this office of the number of books required and the locations to which shipments should be made, orders will be filled promptly.

A contract employee is guaranteed a minimum salary for a fluctuating number of work hours and such employees will be "docked" for days during which no work is performed only in those instances where the pay roll received from the field instructs the Pay Roll Department to make such deductions. In other words, it is the same policy that has always been in effect for irregular hour employees.

An employee working under the "regular work-week plan" is paid a fixed basic sum for 40 (in a few instances 38 or 39) hours in excess of 40. Such an employee will be "docked" for any absence from work which results in the employee working less than 40 (38 or 39) hours in any week unless a recommendation specifically requesting that the employee be paid for such time lost is on the pay roll. The method of calculating the amount that the regular hour employee is to be "docked" is as follows: reduce the base salary to an hourly rate (base weekly pay divided by 40) and multiply by the number of hours lost.

No material, contracts, mimeographs, etc. has been forwarded to any other office in your Division so all arrangements for placing the new plan in effect must be completed from the Division office.

Yours truly,

JNO. C. HALLIBURTON
Vice President

JCH:ks
Incls.

Mr. Sandmeyer: You may cross examine.

Miss Williams: I have no questions, your Honor.

The Court: That is all.

(Witness excused.)

Mr. Sandmeyer: We ask that this document be marked for identification.

The Clerk: Defendant's Exhibit D for identification.

(The document referred to was marked as Defendant's Exhibit D, for identification.)

Mr. Sandmeyer: May it be stipulated, Miss Williams, that the Defendant's Exhibit D for identification is a true copy of the transcript of record in the United States Circuit Court of Appeals, Fifth Circuit, No. 9867, in the case of Philip B. Fleming, administrator of the Wage and Hour Division, United States Department of Labor, vs. A. H. Belo Corporation?

Miss Williams: Yes, sir. [130]

Mr. Sandmeyer: We now offer in evidence the document which has been referred to, being Defendant's Exhibit D for identification.

Miss Williams: If your Honor please, the government will object to the receipt in evidence of this document. As Mr. Sandmeyer just stated to your Honor, this is the record in the Court of Appeals and also, of course, in the Supreme Court in the Belo case. It seems to us clearly inadmissible in this case, a voluminous document of this sort, a record in a different case.

I want to say at this time that we have no objection whatsoever to your Honor examing that or any

other court record for anything he thinks material to the case. That is to say, the court can take judicial notice, I take it, of the records of other courts. But certainly it can't be offered as proof of anything against the government in this case.

The Court: No, it cannot be offered, of course, as proof of any facts. It is just the same as calling the court's attention to the decision of that court; counsel on either side are always permitted to hand the court any decisions or briefs they think will aid the court in determining an issue before the court. But strictly as a matter of evidence, the objection of the government is good. I do not see that it is going to clutter up the record to offer it as an exhibit, so we will all have it available for [131] examination. I will permit it on that basis.

Mr. Sandmeyer: I may say that the purpose of it is not to prove any facts in this case, but merely in connection with the plaintiff's contention that the facts in this case are different than they were in the Belo case. I think there is some dispute among the authorities as to what records a court may make judicial notice of.

While I appreciate, as counsel has suggested, that this court might examine the record, nevertheless, if there is some doubt as to a court's power to take judicial notice of a different case in a different circuit, and in the event this matter should be heard by the Circuit Court of Appeals of the Ninth Circuit, they might not be able to look at the record in the Fifth Circuit.

The Court: That is what I say. It is merely for convenience.

Mr. Sandmeyer: You have ruled on it. I don't need to talk any further.

The Court: It is not binding on the defendant. No one can state here the facts stated in that brief are the correct facts. There is nobody here to testify to that. It will be accepted under the terms suggested.

Miss Williams: I accept your Honor's ruling, of course. What appears to us to be an objection, first of all, is when we make up the record on appeal in this case are portions of the Belo record going to be made a part [132] of this record.

The Court: I will certify that up as a part of the exhibit. That is all there is to it. You will not have to copy anything. If it goes up I will certify it up as a part of this record.

The Clerk: Defendant's Exhibit D into evidence.

(The document referred to was marked as Defendant's Exhibit D, and was received in evidence.)

Mr. Sandmeyer: I ask this be marked Defendant's Exhibit E, for identification.

The Clerk: Defendant's Exhibit E for identification.

(The document referred to was marked as Defendant's Exhibit E, for identification.)

The Court: Our Circuit Court is very liberal in examining the record on appeal. Attorneys came into my court in the last hour and they had to appeal, without a bill of exceptions. It was a question of compelling them to comply with that rule and prepare a bill of exceptions and refer to the tran-

script and the exhibits, and to certify the entire transcript up with the exhibits to the Circuit Court.

In view of the fact it was a criminal case, in which I found the defendants guilty on four counts, I did not want to deny the defendants the right to appeal and reverse it, if they could reverse the judgment of conviction. I had found the defendants guilty. On that record the Circuit Court took jurisdiction of the whole record, just on the [133] transcript, because I certified it to the court.

The decision came down this week. It is Barr vs. the United States. The Circuit Court reviewed the whole record and they dismissed, they overruled the one count and affirmed this court on three counts. I mention that just to show you how liberal our Circuit Court is, in accepting those records.

Frankly, I have great doubt as to whether or not just on a transcript they could review the whole case, because it means that the court up there did the extraordinary work of going through all that transcript, which is the duty of the attorneys to call their attention to a part of it. Just imagine, if there was a transcript as we have had here. In some cases I have tried for weeks it has run thousands of pages. Imagine what work that involves in the Circuit Court. As it happened it was only a two or three-day case. I just mentioned that.

Proceed, Mr. Sandmeyer.

Mr. Sandmeyer: I would like to add to Defendant's exhibits for identification what is the reply brief of the appellant in the United States Circuit Court of Appeals in the Belo case. I would like to

add that as part of the same exhibit; the appellant's opening brief and the brief of the appelllee.

I am not particularly interested in the brief of appellee. It doesn't make such difference what he contended, [134] but counsel said if anything goes in she wants them all to go in. May they all be marked Defendant's Exhibit E?

The Court: Defendant's Exhibits E, E-2 and E-3. They will be admitted under the same conditions I admitted the others.

Miss Williams: May I be heard? It seems to us these are clearly not admissible because at the most these contain arguments of the government. I am not clear at this time for what purpose they are being offered or what use is to be made of them. If counsel might wish to contend they may be inconsistent arguments or something, but I can't see what possible materiality the briefs in another case can have.

Mr. Sandmeyer: I will tell you. In appellant's reply brief, that is the Administrator's brief in the Circuit Court, he makes a summary of what the transcript shows. That it, a statement similar to the plaintiff's schedules in this case.

Miss Williams: Which brief is that, may I ask?

Mr. Sandmeyer: The reply brief of the appellant.

Miss Williams: The government's reply brief?

Mr. Sandmeyer: The government stated what the record showed in the transcript. There may be several hundred of the individual payrolls. And then he tells how many there were and how many were

paid their weekly guarantee, even though they didn't work over 40 hours, which is Plaintiff's [135] Schedule 1.

I want to show that that same contention was made in the Belo case. The brief, in the first place, is to show that summary which is in the transcript. It is not to show that the Administrator took an inconsistent position or made a different argument, but to show he made the same one there that was here. Therefore, necessarily, the Supreme Court passed upon the very arguments that are made before this court. That is the purpose of it.

The Court: Let us be clear on it. You will have to conceive that strictly speaking this exhibit is not evidence in this court.

Mr. Sandmeyer: That is correct.

The Court: Now, nothing in there is binding on this defendant because there is no opportunity here for examination or cross examination of it, or any witnesses who have testified to it. I am admitting it for the purpose of assisting the court, the same as I would read a decision of the court or I would read an interpretive bulletin of the Administrative office, such as has been offered here by the Administrative office. It is just for the purpose of getting, if I can, any additional light on the important questions before this court. There is nothing in there that is binding on the government, there could not be, whether we find an argument consistent or not. You do not have to answer it. [136]

Miss Williams: Yes, sir.

The Court: Then the Circuit Court will have the advantage if they find anything in it. The court is

not bound even by the arguments made by counsel, as we often have to make our own research and go back into a great many sources and get assistance in arriving at a decision this court has not called our attention to at all.

I have a 22-page opinion which I think that more than half of which I got from my own personal research, without any assistance from counsel on either side.

I think we are all clear on the conditions under which these are admitted.

Is there any objection to my position?

Mr. Sandmeyer: No, sir. I wanted that for that very limited purpose.

The Court: All right, it is limited.

The Clerk: Are they admitted, your Honor?

The Court: Yes.

The Clerk: The first booklet, your Honor, which was marked E for identification will now be E in evidence. And the next will be E-1 in evidence and the next will be E-2 in evidence.

(The documents referred to were marked as Defendant's Exhibits E, E-1 and E-2, and were received in evidence.)

Mr. Sandmeyer: These are different. These are the Administrator's brief in the Supreme Court and the [137] respondent's brief in the United States Supreme Court. I was going to offer those as Defendant's Exhibits F-1 and F-2.

The Court: All right. They will be admitted under the same conditions.

Miss Williams: We make the same objection.

The Court: I make the same ruling. They are admitted for the same limited purpose.

The Clerk: Defendant's Exhibits F-1 and F-2 in evidence.

(The documents referred to were marked as Defendant's Exhibits F-1 and F-2, and were received in evidence.)

Mr. Sandmeyer: I will call Mr. Hugh Leonard.

HUGH HENRY LEONARD,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Hugh Henry Leonard.

The Clerk: Take the stand.

By Mr. Sandmeyer:

Q. Where do you reside, Mr. Leonard?

A. Duncan, Oklahoma.

Q. Are you employed by the Halliburton Oil Well Cementing Company? A. Yes, sir. [138]

Q. In what capacity or position?

A. I am the assistant secretary-treasurer.

Q. How long have you been in the employ of the Halliburton Company? A. Since July, 1944.

Q. And always at the main office at Duncan?

A. Yes, sir.

Q. When you first went to work there in 1934, what was your position?

(Testimony of Hugh Henry Leonard.)

A. I performed general accounting duties in the accounting department.

Q. Then what did you do?

A. In 1936 I became chief tax accountant. And in July of 1940 I was appointed as assistant secretary-treasurer and have acted in that capacity since.

Q. Have you attended college?

A. Yes, sir.

Q. Did you get a degree? A. Yes, sir.

Q. From what school?

A. Oklahoma University.

Q. What is your degree?

A. Bachelor of Science and Business Administration.

Q. What was your major? A. Accounting.

Q. Accounting? [139] A. Accounting.

Q. Are you a certified public accountant?

A. No, sir.

Q. Since July 1, 1942, have you had anything to do with the payroll records of the Halliburton Oil Well Cementing Company?

A. The payroll periods are maintained under my general supervision. There is an individual in charge of the payroll department directly, but the records are maintained under my general supervision.

Q. Referring to Plaintiff's Exhibit 1, I call your attention to Exhibit D, being a portion thereof, entitled "Application of the Fair Labor Standards Act to field employee, Mimeograph No. II." Will you examine that, please?

(Witness complies.)

(Testimony of Hugh Henry Leonard.)

Q. Please state whether or not you had anything to do with the preparation of that document?

A. I prepared the document.

Q. The other so-called instructions or mimeographs relating to the pay roll records and the keeping of time and so on that are annexed to this pre-trial statement, did you likewise prepare those or have them prepared under your supervision?

A. I prepared them or had them prepared under my supervision. [140]

Q. The forms of the payroll which are attached here, as for instance, Exhibit H, attached to Exhibit 1, was that form devised by you or under your direction? I mean the printed form.

A. I devised the form.

Q. The printed form?

A. I devised the form.

Q. That happens to be a sample payroll. Did you have anything to do with making out the sample or the typewritten portions of it?

A. It was prepared under my supervision.

Q. Is that also true with respect to the so-called bi-weekly contract payroll?

A. It was prepared under my supervision.

Q. Now, prior to July of 1942, were all the employees of the Halliburton Company—and may I say here when I say Halliburton Company I mean the Halliburton Oil Well Cementing Company as it may save time—upon what period were the employees paid?

A. They were paid on a semi-monthly pay period basis.

(Testimony of Hugh Henry Leonard.)

Q. Was that uniform for all the employees wherever located?

A. That was true of all employees of the company.

Q. In how many States does the Halliburton Company operate and have employees? [141]

A. Approximately 20.

Q. Incidentally, about how many employees are there in the Halliburton Company?

A. Approximately 2100.

Q. How many employees have signed, that is, at one time, these typewritten contracts similar to the ones that are in use now in California?

Miss Williams: Just a moment. May I ask if your question is addressed to a time subsequent to July 1, 1942?

Mr. Sandmeyer: Yes.

The Witness: May I clarify the question?

Q. By Mr Sandmeyer: Yes.

A. You are speaking of employees now on the payroll?

Q. Yes. A. Yes.

Q. I appreciate there has been a turnover. I mean any one time. Say, right now, how many employees are there who have signed contracts on the form now in use in California?

A. You mean in total?

Q. Yes. A. Approximately 900.

Q. Is the plan of payment of the employees on the contract payroll uniform in all of the States?

A. Yes, sir.

(Testimony of Hugh Henry Leonard.)

Q. Now, referring to Exhibit 1-H, was that payroll [142] devised for the employees on the contract plan alone or for the other employees?

A. It was devised to be used for employees under the contract plan and other plans. That is, regular hour employees.

Q. You are familiar with the provision in the written contracts providing for a weekly guarantee?

A. Yes, sir.

Q. Now, notwithstanding a weekly guarantee amount, you continued to pay persons who had signed such contracts on monthly or semi-monthly basis?

A. We continued paying them semi-monthly.

Q. Until January of this year?

A. We changed to bi-weekly payroll effective January 16, 1944.

Q. What was the reason for paying the employees who had signed contracts on a semi-monthly basis, if there was a reason?

A. You mean as of July 1, 1942?

Q. Yes.

A. Ever since the company has come into existence the employees had been paid semi-monthly. There are various commitments, that is, for grocery bills or whatever personal expenses they had which were on a monthly basis or semi-monthly basis. They count on a check every half month. Their various deductions, insurance and assignments [143] of different natures were on a monthly basis, and in addition to that our financial records were based on a

(Testimony of Hugh Henry Leonard.)

calendar month or calendar quarter or calendar year. I am speaking of financial statements.

Q. Of the company?

A. Of the company. All those factors led us to continue paying the contract employees semi-monthly. In addition to that it would have required considerable more work, considerable more detail in the payroll department, to have made a change.

Q. You would have payroll periods for the contract employees overlapping with those that were on a monthly basis? A. Yes.

Q. Now, in this Exhibit 1-H at the top of the various columns are certain words or abbreviations. Over one column it says "Overtime worked." According to the instructions and practices until, say, January of this year, there was put in that column the number of hours over 84?

A. There was put in that column the number of hours over 84 for the contract employees only.

Q. That is what I mean. Why did it have the heading, if there is a reason, of "Overtime pay."

A. For the contract employees that actually meant additional compensation paid. The calculation of a contract [144] employee's pay at the basic hourly rates stipulated in the contract for the first 40 hours, plus not less than one and one-half times that basic hourly rate for 44 hours additionally equalled the guarantee in the contract. Therefore, in the event that an employee did not exceed 84 hours in any single work week he received no actual earnings in excess of the guarantee.

(Testimony of Hugh Henry Leonard.)

Therefore, so as to use this payroll for both regular hour employees and contract employees and, as a matter of simplification so the payroll clerks in the various field offices would understand it more readily, why, the term "overtime pay" for regular hour employees was overtime calculated on a fixed rate or a basic rate with no guarantee for the first 40 hours. For the contract employees, that meant additional compensation paid in excess of 84 hours.

Q. You speak about some clerks or stenographers that might have to make up this payroll and, therefore, you wanted it simple. Are these made up whereever you do business in some places where you no not have clearks or stenographers trained in accounting?

A. We have very few instances of trained accountants preparing payrolls in the field offices. We have approximately, I think, 13 or 14 field payroll offices.

Q. Will you keep your voice up as much as you can. It was your endeavor then to simplify for the employees, clerks and stenographers, in making that up as much as you could? [145] A. Yes, sir.

Q. Now, is that the reason that you carried on there the monthly equivalent of the weekly guarantee, or what was the reason for that?

A. That was one reason. As far as the monthly equivalent was concerned, the employee received one-half of the monthly equivalent for any semi-monthly period and unless his work hours exceeded 84 in a week, terminating in that period, why, the

(Testimony of Hugh Henry Leonard.)

one-half of the monthly equivalent fulfilled the terms of the contract and complied with the Fair Labor Standards Act. There seemed to be no particular point in going through any additional calculations that would result in an employee receiving one-half of that monthly equivalent.

In the event the employee exceeded 84 hours in any particular work week, ending in a pay period, his additional compensation earnings were added to the one-half of the monthly equivalent. It was largely a matter of simplification.

Q. The calculation of the additional overtime pay at one and one-half times the hourly rate specified in the contract was done at the home office at Duncan? A. No, sir.

Q. It was not?

A. That was performed in the field offices. In a majority of the cases it was performed in the field offices [146]

Q. If a person worked more hours than were paid for by the weekly guarantee or the monthly equivalent or semi-monthly equivalent at these specified contract rate per hour for the first 40 hours and one and one-half times that amount or more for all hours over 40, such excess hours were paid for at one and one-half times the hourly rate specified in the contract?

A. At not less than one and one-half times.

Q. At not less than one and one-half times?

A. Yes.

(Testimony of Hugh Henry Leonard.)

Q. That was added then to the semi-monthly equivalent of the monthly guarantee?

A. That is right.

Q. You spoke of deductions. Are those recorded and made at the home office in Duncan?

A. Yes, all deductions are made at the home office.

Q. Do many employees have you deduct from their pay and make payments for them of certain amounts each month?

A. Practically all employees have some sort of deductions each month, in addition to Social Security taxes.

Q. I meant by voluntary ones, particularly.

A. Quite a large number.

Q. You pay their insurance premiums for them, that is, other than group insurance?

A. Yes, sir.

Q. Some have installment contracts they ask you to [147] keep up? A. Yes, sir.

Q. At the time these written contracts were executed was it the company's interpretation where a man worked only a partial work week that he should receive an amount at least equal to a prorata amount of his weekly earnings? A. Yes, sir.

Q. And that was contained in your instructions on the sample payroll that was issued at that time?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit 4, entitled "Payroll periods in which compensation was at daily rates prorated from guarantee," which I take

(Testimony of Hugh Henry Leonard.)

are the work weeks, man work weeks in which the employee did not work a full week or was not paid for a full week. Have you made any examination of that schedule or of the original records from which they were taken to ascertain the cause or causes of the respective partial work weeks?

A. I made an examination of the original records.

Q. Will you please state the number of the partial work weeks in the period from July 1, 1942—and I mean by that man work weeks—up to what date did you make your examination?

A. I believe March 11, 1944.

Q. All right. How many partial man weeks were there during that period? [148] A. 174.

Q. of that number how many were occasioned by the man starting to work in the middle of a pay period, or after the beginning of a pay period?

A. 95 of the 174.

Q. What percent is that? A. 55 percent.

Q. 55 percent of these partial work weeks were caused by a man starting his employment or being employed on a day after the beginning of the pay period? A. Yes.

Q. All right. How many and what percent thereof were occasions where a man's employment terminated at a date prior to the end of the pay period?

A. 63 instances, or 37 percent of the total.

Q. What was the percent where they were employed at the beginning? A. 55.

(Testimony of Hugh Henry Leonard.)

Q. 55 and 37, does that mean there were 92 percent of all these partial man work weeks that were caused either by being employed at the beginning of a pay period or having employment terminated before the end of the payroll?

A. You say at the beginning?

Q. After the beginning.

A. After the beginning?

Q. Yes. [149] A. Yes, sir.

Q. 92 percent? A. Yes.

Q. That leaves 8 percent that have a partial work week for some other reason?

A. Yes, sir.

Q. What were those other reasons?

A. In four instances or two percent an employee was transferred either from California to another division or from another division into California. In those instances the employee received the balance of his guarantee on another payroll. There was no partial work week involved. It merely meant he was carried on two payrolls.

In four of the instances he did not receive a full guarantee and the payroll records show he was voluntarily off.

In six of the instances the employee was a part-time employee and din't work full time, so it resulted in a partial work week.

In two of the instances it showed that a man received only a portion of his guarantee as a result of an injury. Those last few percentages, are you interested in those?

Q. No, they are too small. A. All right.

(Testimony of Hugh Henry Leonard.)

Mr. Sandmeyer: I ask the clerk to mark this document as Defendant's Exhibit G for identification. [150]

The Clerk: Defendant's Exhibit G for identification.

(The document referred to was marked as Defendant's Exhibit G, for identification.)

Q. By Mr. Sandmeyer: I show you, Mr. Leonard, a document entitled "Analysis of earnings in California by contract employees working partial pay period," which appears to be a schedule. Did you have anything to do with the preparation of that schedule?

A. It was prepared under my supervision.

Q. From the original payroll?

A. From the original payroll records.

Q. Will you please state what is shown on this schedule?

A. Column one is merely the name of the employee.

Q. In alphabetical order?

A. Alphabetically arranged. Column 2 is an explanation of the absence. That is a schedule from which I gathered the information that I quoted just a moment ago in regard to those instances in which an employee did not receive his full guarantee. That is, a partial pay period employee.

Column 4 is the number of days. That column represents the number of days for which the employee was paid during the semi-monthly pay period of 14, 15 or 16 days.

(Testimony of Hugh Henry Leonard.)

Column 5 is the weekly guarantee stipulated in each of the contracts signed by the employees listed. [151]

Column 6 represents the amount that would have been paid each of those employees had there been no guarantee feature in the contract.

Q. Explain that a little further. Paid on what basis?

A. Paid on the basis of the—that is, calculated on the basis of the regular hourly rate listed in the contract for the first 40 hours, and not less than one and one-half times that hourly rate for each hour in excess of 40 during any work week.

Column 7 represents the amount actually paid each employee for that partial pay period. It is the amount derived by taking the ratio of the number of days that the employee actually worked to the total number of days in the pay period.

Q. Taking that portion or fractional part of the semi-monthly equivalent of the weekly guarantee?

A. Yes.

Q. And the amounts in the last column to the right are the amounts actually paid the employee in that pay period, which involved a partial pay period? A. That is right.

Q. Now, the next to the last column is the amount he would have received had there been no guarantee and he had been paid on the hourly rate, plus time and a half, but no guarantee?

A. With no guarantee. [152]

Q. This is what he actually received (indicating)? A. Yes.

(Testimony of Hugh Henry Leonard.)

Q. Are there any instances in there where the employee actually received less than the calculations on the hourly and time and a half?

A. There are three instances.

Q. Three instances where for some cause or another it wasn't caught, that his partial period wasn't paid for by the guarantee?

A. That is right.

Q. Do you know the amounts involved in those three instances? A. Here is one, $1.55.

The Court: What item is that?

The Witness: Jess D. Able, that is the second name on the list.

Q. By Mr. Sandmeyer: It doesn't make any difference. We can find them ourselves.

A. Jess D. Able, $1.55; Edward Mantz, $7.72; Robert F. Smith, $.52.

Q. How many are there altogether that received the prorata amount, or worked a partial pay period? A. 174 instances.

Q. There was an error made in three out of 174?

A. Yes, sir.

Mr. Sandmeyer: We offer this schedule now marked [153] Defendant's Exhibit G, for identification, in evidence.

The Court: It is admitted.

Miss Williams: May I ask one question about it?

Mr. Sandmeyer: Yes.

Miss Williams: As I understand the testimony, Mr. Leonard, these figures were based upon the figures on your payrolls.

(Testimony of Hugh Henry Leonard.)

The Witness: Yes.

Miss Williams: There is no variation from the figures on your payrolls, except you have made calculations from those figures?

The Witness: Unless there is an error.

Miss Williams: In these errors you have pointed out?

The Witness: Unless there has been a typographical error.

Miss Williams: In other words, you are not offering this to correct the records in any way or vary the——

The Witness: Not that I know of.

Miss Williams: I want to ask you, you testified that the calculations made in the column entitled "Computations on hourly rate basis" were made, I believe your testimony was, on the hourly rate for the first 40 hours and not less than one and one-half times the hours over 40?

The Witness: Yes.

Miss Williams: When you refer to the rate "not less than one and one-half times the hours over 40" don't you mean the rate shown in the fourth column in Plaintiff's [154] Exhibit 1-C, the chart used in making up the payroll?

The Witness: Yes.

The Court: The exhibit is admitted in evidence.

The Clerk: Defendant's Exhibit G in evidence.

(The document referred to was marked as Defendant's Exhibit G, and was received in evidence.)

(Testimony of Hugh Henry Leonard.)

DEFENDANT'S EXHIBIT G

Halliburton Oil Well Cementing Company

ANALYSIS OF EARNINGS IN CALIFORNIA BY CONTRACT EMPLOYEES WORKING PARTIAL PAY PERIOD

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Able, Jess D.	E	Dec. 1-15, 1943	7	$38.08	$23.80	$38.50
Able, Jess D.	S	Dec. 16-31, 1943	2	38.08	11.76	10 31
Adams, William A.	E	Jan. 1-15, 1943	9	34.62	27.26	45.00
Allen, Floyd D.	E	Oct. 1-15, 1942	4	34.62	11.84	20.00
Allred, James T.	E	March 1-15, 1943	11	38.08	42.05	60.50
Alter, Jess N.	T	Oct. 1-15, 1942	9	53.08	10.00	69.00
Alter, Jess N.	L	Dec. 16-31, 1943	4	63.46	25.41	34.36
Ash, John D.	E	Sept. 1-15, 1943	14	38.08	56.13	77.00
Ash, John D.	S	Oct. 1-15, 1943	2	40.38	.....	11.66
Barbour, Calvin H.	E	Sept. 1-15, 1943	9	38.08	27.84	49.50
Barbour, Calvin H.	S	Oct. 1-15, 1943	11	40.38	15.01	64.13
Barclay, Guy W.	E	March 1-15, 1943	4	34.62	10.24	20.00
Barnett, John E.	L	Sept. 1-15, 1942	10	38.08	5.60	55.00
Barnett, John E.	S	Jan. 1-15, 1944	10	51.92	40.80	75.00
Baxter, Ellwood P.	E	June 1-15, 1943	13	34.62	27.62	65.00

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Baxter, Ellwood P.	S	Oct. 1-15, 1943	11	$43.85	$26.88	$69.63
Bearce, Lloyd C.	E-S	Jan. 1-15, 1944	4	38.08	12.60	22.00
Beeler, Odren I.	E	March 1-15, 1943	1	34.62	2.24	5.00
Beeler, Odren I.	S	May 1-15, 1943	11	38.08	39.61	62.41
Bentley, Aubrey S.	E	Nov. 1-15, 1943	5	38.08	6.83	27.50
Bentley, Aubrey S.	S	Nov. 16-30, 1943	8	38.08	32.64	44.00
Blasdell, Clyde H.	E	May 1-15, 1943	9	34.62	41.93	47.23
Blasdell, Clyde H.	S	Nov. 16-30, 1943	8	46.15	8.21	53.33
Booth, John A.	E	Feb. 13-26, 1944	12	40.38	25.27	69.22
Borden, Louis L.	E	Aug. 16-31, 1942	7	34.62	.....	32.83
Bowen, Babe	E	Jan. 16-29, 1944	6	40.38	21.47	34.62
Brazeal, Wm. T.	S	Oct. 1-15, 1942	4	38.08	.....	38.50
Burke, Henry E.	E	Sept. 1-15, 1943	7	34.62	17.89	35.00
Byers, Hubert H.	T	May 16-31, 1943	5	56.54	19.88	38.27
Cation, Kenneth P.	E	May 16-31, 1943	13	34.62	53.54	60.93
Chandler, Ivan B.	E	May 16-31, 1943	5	34.62	1.28	23.44
Chandler, Ivan B.	S	July 1-15, 1943	2	38.08	6.30	11.00
Clegg, Ervin E.	E	Dec. 16-31, 1942	5	34.62	12.16	23.45

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Cline, T. W.	E	Jan. 16-29, 1944	2	$40.38	$ 5.70	$11.54
Clyburn, Lonnie F.	E	Dec. 1-15, 1943	9	38.08	39.17	49.50
Clyburn, Lonnie F.	S	Jan. 1-15, 1944	3	38.08	9.96	16.50
Coleman, Floyd	E	April 16-30, 1943	11	34.62	47.87	55.00
Combs, Alfred	T	Sept. 1-15, 1943	10	63.46	40.16	91.65
Comstock, Leslie H.	E	Oct. 1-15, 1943	8	57.69	47.42	66.66
Corwin, E. L.	S	Oct. 1-15, 1942	13	55.38	72.01	122.06
Cummins, Glen L.	E	Feb. 16-28, 1943	5	34.62	18.40	28.85
Cummins, Glen L.	S	Dec. 1-15, 1943	8	46.15	42.80	61.22
Daley, John E.	E	Nov. 1-15, 1943	3	38.08	5.60	16.50
Daley, John E.	S	Jan. 1-15, 1944	10	45.00	21.66	65.00
Davis, Alfred	E	Oct. 1-15, 1943	12	34.62	18.49	60.00
Davis, Raymond E.	E	Sept. 16-30, 1942	10	34.62	40.46	50.00
Davis, Raymond E.	S	Dec. 16-31, 1942	7	34.62	30.78	32.83
Dillon, Claude W.	E	April 16-30, 1943	2	34.62	4.48	10.00
Dillon, Claude W.	S	May 16-31, 1943	14	40.38	20.52	76.55
Dobie, Henry G.	L of Abs.	Oct. 16-31, 1942	9	57.69	36.80	70.29
Dollar, Harless W.	E	Oct. 1-15, 1943	4	38.08	12.60	22.00

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Dollar, Harless W.	S	Oct. 15-31, 1943	10	$38.08	$42.95	$51.56
Earl, Alvin W.	S	July 16-31, 1942	13	38.08	4.72	67.03
Easterling, James F.	E	July 16-31, 1943	1	34.62	3.52	4.69
Erwin, Wm. H.	S	April 1-15, 1943	2	57.69	8.64	16.67
Fisher, Robert L.	E	Jan. 1-15, 1944	4	43.85	15.17	25.32
Flippen, Walter	E	May 16-31, 1943	3	34.62	8.32	14.06
Fippen, Walter	S	July 1-15, 1943	8	38.08	24.61	44.00
Fordyce, Ray J.	E	April 16-30, 1943	4	34.62	17.75	20.00
Fordyce, Ray J.	S	May 1-15, 1943	10	34.62	43.73	50.00
Franzen, Edwin R.	E	Aug. 16-31, 1942	12	34.62	46.04	56.28
Fredenburg, Irvin L.	L	Jan. 30-Feb. 12, '44	4	54.81	.....	46.98
Fry, Burton C.	S	Feb. 16-28, 1943	4	57.69	.....	38.46
Fulliwider, Earl E.	E	Sept. 16-30, 1943	10	53.08	54.25	76.70
Giggy, Karl L.	E	Jan. 1-15, 1944	12	38.08	26.08	66.00
Giggy, Karl L.	S	Jan. 30-Feb. 12, '44	2	40.38	.....	11.54
Gilchrist, Travis A.	E	May 16-31, 1943	1	34.62	.....	4.69
Gilchrist, Travis A.	S	June 16-30, 1943	5	34.62	.....	25.00
Goodwin, Claud M.	E	Feb. 27-Mar. 11, '44	11	40.38	63.46	63.46

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Graham, Wm. J.	E	Oct. 1-15, 1943	3	$38.08	$ 5.42	$16.50
Graham, Wm. J.	E	Nov. 16-30, 1943	14	40.38	32.87	81.62
Graham, Wm. J.	S	Feb. 27-Mar. 11, '44	10	46.15	65.92	65.92
Griffin, Aaron	S	Oct. 16-31, 1942	10	42.69	16.60	57.80
Griffin, William A.	E	Feb. 27-Mar. 11, '44	13	46.15	92.30	92.30
Grinstead, Howard G.	E	Jan. 30-Feb. 12, '44	10	40.38	57.68	57.68
Halliburton, David	E	Oct. 16-31, 1943	5	34.62	13.12	23.44
Halliburton, David	Part Time	Nov. 1-15, 1943	4	34.62	10.24	20.00
Halliburton, David	Part Time	Nov. 16-30, 1943	6	34.62	17.28	30.00
Halliburton, David	Part Time	Dec. 1-15, 1943	6	34.62	25.92	30.00
Halliburton, David	Part Time	Dec. 16-31, 1943	9	34.62	32.09	42.18
Halliburton, David	Part Time	Jan. 1-15, 1944	1	34.62	2.56	5.00
Halliburton, David	Part Time	Jan. 16-29, 1944	3	34.62	14.84	14.84
Hampson, Jack E.	E	Dec. 1-15, 1943	2	38.08	5.78	11.00
Hampson, Jack E.	S	Jan. 16-29, 1944	12	40.38	69.23	69.23
Harrington, Burn C.	E	Feb. 13-26, 1944	8	53.08	22.74	22.74
Harris, Clyde U.	E	April 16-30, 1943	11	34.62	50.35	55.00
Harris, Clyde U.	S	Aug. 16-31, 1943	6	43.85	.....	35.62

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Hawes, Millard T.	E	Dec. 16-31, 1942	14	$34.62	$52.58	$65.66
Heck, Theodore	E	Oct. 16-31, 1943	6	38.08	20.07	30.93
Herrick, Sam F.	S	March 1-15, 1943	4	57.69	18.12	33.33
Hogan, Floyd R.	E	Sept. 16-30, 1943	8	38.08	35.28	44.00
Hogan, Floyd R.	S	Dec. 16-31, 1943	5	42.69	27.66	31.02
Holder, Kenneth C.	E	May 1-15, 1943	2	34.62	5.12	10.00
Holder, Kenneth C.	S	Sept. 1-15, 1943	10	40.38	51.78	62.89
Howton, Audie L.	E	March 1-15, 1943	5	41.54	15.60	30.00
Howton, Audie L.	S	Sept. 1-15, 1943	10	46.15	24.59	66.66
Howton, Audie L.	Injury	June 1-15, 1943	2	46.15	.....	13.54
Howton, Audie L.	Injury	June 16-30, 1943	10	46.15	.86	66.67
James, Frank H.	E	May 16-31, 1943	3	34.62	11.52	14.06
Jones, Donavan E.	E	Jan. 1-15, 1943	3	34.62	8.16	15.00
Kennedy, H. V.	T	May 16-31, 1943	5	51.92	17.28	35.15
Knott, Lonnie A.	E	Aug. 16-31, 1942	7	34.62	7.68	32.83
Laquay, Tennie H.	E-S	Sept. 16-30, 1942	9	34.62	37.80	48.22
McClintick, F. Page	E	Jan. 1-15, 1944	12	43.85	35.59	75.96
McCollum, Frank E.	E	Jan. 16-29, 1944	1	40.38	5.77	5.77

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
McCollum, Frank E.	S	Feb. 27-Mar. 11, '44	11	$40.38	$63.46	$63.46
McClanahan, Drew S.	E	May 16-31, 1943	4	34.62	15.36	18.75
McGalanahan, Drew S.	S	July 16-30, 1943	13	38.08	38.91	68.12
McClellan, Leslie L.	S	Nov. 1-15, 1943	8	46.15	39.23	53.36
McClellan, Leslie L.	E	Jan. 30-Feb. 12, '44	12	46.15	79.10	79.10
McCormick, Clarence S.	E	July 16-31, 1943	8	34.62	24.98	37.50
McCormick, Clarence S.	S	Aug. 1-15, 1943	9	34.62	46.27	53.17
Mantz, Edward	E	April 16-30, 1943	11	34.62	63.46	55.74
Mantz, Edward	S	Aug. 16-31, 1943	6	43.85	.....	35.62
Marker, Leon E.	E	Oct. 16-31, 1942	6	34.62	11.68	28.14
Marker, Leon E.	S	April 16-30, 1943	6	43.85	16.48	38.00
Martin, Lloyd C.	E-S	Feb. 13-26, 1944	3	42.69	18.78	18.78
Miller, Clarence L.	E-S	Jan. 30-Feb. 12, '44	6	40.38	34.61	34.61
Moore, Eugene W.	E	Feb. 27-Mar. 11, '44	3	40.38	17.31	17.31
Newsom, Dan T.	E	Aug. 16-31, 1943	1	38.08	2.80	5.16
Newsom, Dan T.	S	Sept. 1-15, 1943	5	38.08	14.27	27.50
Nichols, Ray C.	E	Jan. 30-Feb. 12, '44	12	34.62	59.35	59.35
Osgood, Edward J.	E	Oct. 1-15, 1943	12	34.62	30.91	60.00

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Osgood, Edward J.	S	Jan. 1-15, 1944	10	$42.69	$22.84	$61.66
Parcher, Henry L.	E	Oct. 1-15, 1943	4	38.08	2.80	22.00
Parrish, Deward L.	E	Nov. 1-15, 1943	6	43.85	20.92	37.98
Parrish, Eutah L.	E	Nov. 16-30, 1943	5	43.85	16.40	31.65
Parrish, Eutah L.	S	Dec. 16-31, 1943	5	43.85	29.50	29.69
Patterson, Thomas D.	E	Sept. 1-15, 1943	13	38.08	87.21	88.94
Peterson, Roger S.	S	Oct. 1-15, 1942	3	51.92	.....	22.50
Pierce, Herbert	S	Aug. 1-15, 1942	14	40.38	.....	81.67
Preston, Troy J.	S	June 1-15, 1943	2	63.46	.....	18.33
Ratzliffe, Wilbur J.	E	March 16-31, 1943	14	34.62	40.71	65.62
Ratzliffe, Wilbur J.	S	April 16-30, 1943	2	38.08	4.63	11.00
Ray, R. L.	E	Nov. 1-15, 1943	11	38.08	19.60	60.50
Ray, R. L.	S	Nov. 16-30, 1943	12	38.08	62.18	66.00
Richart, James D.	E	Dec. 16-31, 1943	9	43.85	33.86	53.43
Richart, James D.	S	Jan. 1-15, 1944	6	43.85	14.80	37.98
Rhoades, B. J., Jr.	E	Jan. 16-29, 1944	13	40.38	75.00	75.00
Raso, James P.	E	Sept. 16-30, 1943	3	38.08	13.65	16.50
Scott, Archie A.	E-S	Feb. 16-28, 1943	6	34.62	23.77	34.61

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Scott, Lewis	E	Dec. 1-15, 1942	1	$34.62	$ 2.56	$ 5.00
Scott, Lewis	S	Dec. 16-31, 1942	7	34.62	20.98	32.83
Sellers, James T.	E	Oct. 16-31, 1943	13	38.08	66.23	67.03
Sellers, James T.	S	Nov. 16-30, 1943	9	40.38	42.18	52.50
Sellers, Woodrow W.	E	March 16-31, 1943	1	34.62	2.56	4.69
Sellers, Woodrow W.	S	April 16-30, 1943	8	34.62	24.41	40.00
Sewell, Elmer W.	E	Feb. 27-Mar. 11, '44	10	38.08	28.17	54.40
Sides, Frank J.	E	Aug. 1-15, 1943	12	34.62	33.48	60.00
Simmons, Leroy	E-S	Nov. 16-30, 1943	7	38.08	22.33	38.50
Smith, Robert F.	E	Oct. 16-31, 1943	7	38.08	36.61	36.09
Smith, Robert F.	S	Nov. 1-15, 1943	7	38.08	28.25	38.50
Smith, Robert S.	L of Abs.	Aug. 16-31, 1943	6	63.46	.....	51.56
Souders, Wm. D.	E	Nov. 1-15, 1943	6	38.08	7.70	33.00
Souders, Wm. D.	S	Dec. 16-31, 1943	1	40.38	.....	5.47
Thomas, Henry L.	S	Aug. 1-15, 1942	6	34.62	.....	30.00
Thompson, Bernie R.	E-S	Jan. 16-31, 1943	14	40.38	41.52	76.55
Thompson, Jimmie L.	E	Dec. 1-15, 1943	5	38.08	17.15	27.50
Thompson, Jimmie L.	S	Dec. 16-31, 1943	9	38.08	24.28	46.40

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Defendant's Exhibit G—(Continued)

Analysis of Earnings in California by Contract Employees Working Partial Pay Period—(Continued)

Employee	Explanation of Absence (see code)*	Pay Period	No. Days	Weekly Guarantee	Comp. on Hourly Rate Basis	Gross Pay Per Payroll
Thompson, Roy B.	E	June 1-15, 1943	13	$34.62	$31.60	$65.00
Thompson, William N.	E	Sept. 1-15, 1943	12	51.92	69.48	90.00
Tinker, Orville A.	S	Feb. 1-15, 1943	10	56.54	.....	81.66
Trott, Ellsworth C.	S	Oct. 1-15, 1942	3	55.38	.....	24.00
Turkett, Ross W.	E	Nov. 16-30, 1943	5	38.08	16.80	27.50
Wagner, Erle W.	L	Aug. 1-15, 1942	10	57.69	59.25	83.33
Ward, James L.	E	Feb. 27-Mar. 11, '44	9	38.08	49.68	49.68
Ward, Jimmie	E	Oct. 1-15, 1942	4	34.62	6.88	20.00
Ward, Jimmie	S	Jan. 1-15, 1944	11	57.69	22.68	91.63
Ware, James B.	S	June 1-15, 1943	10	40.38	35.34	58.33
Weatherly, George H.	E	Oct. 1-15, 1943	9	53.08	32.00	69.03
Wilbur, Lasher A.	E	Aug. 1-15, 1943	13	34.62	43.67	65.00
Wilson, Lawrence E.	S	Sept. 16-30, 1943	4	46.15	.....	26.68
Wilson, Thomas E.	S	April 1-15, 1943	3	34.62	7.68	15.00
Young, Lyman	S	Aug. 1-15, 1943	9	40.38	13.30	52.50

* Code for Absences: E—New Employee S—Separation T—Transferred L—Voluntary Off

Note: Each transferred employee (identified by the code "T") received additional pay in another location which, combined with his California earnings, compensated him for a full half month's base pay.

[Endorsed]: Filed 5/17/44.

(Testimony of Hugh Henry Leonard.)

Q. By Mr. Sandmeyer: The figures or amounts shown in the last column of Plaintiff's Exhibit 1-C actually are at least one and one-half times the hourly rate shown in column 3 of that schedule; are they not?

A. At least one and one-half times.

Q. In computing the next to the last column in Defendant's Exhibit G, for the first 40 hours, would that be at the hourly rate specified in the contract? A. That is right.

Q. And for computing hours over 40, would that be the figure on Exhibit 1-C in column 4, immediately opposite whatever that hourly rate was that was specified in the contract? A. Yes, sir.

Mr. Sandmeyer: I ask the clerk to mark this document Defendant's Exhibit H for identification.

The Clerk: Defendant's Exhibit H for identification.

(The document referred to was marked as Defendant's Exhibit H, for identification.)

Q. By Mr. Sandmeyer: Mr. Leonard, I show you Defendant's Exhibit H for identification, being a schedule [155] entitled "Analysis of type of work performed by California contract employees."

Did you have anything to do with the preparation of that schedule?

A. The schedule was prepared under my supervision.

Q. And from what was it taken?

A. From ~~the~~ daily time reports of the California employees.

[Endorsed]: Filed 5/17/44.

(Testimony of Hugh Henry Leonard.)

Q. That is, the daily reports that were made out by the individual employees themselves?

A. Yes, sir.

Q. How did you select the periods covered?

A. We selected four periods of equal length. That is, four complete weeks in each period, and there was approximately six months' difference between the dates of the periods. So as to get a complete sample of that activity, that is, a complete sample of the information reflected by the daily time reports.

Q. And the figure in column 1 following the period, being the figure 1,796, would that be the total hours of all of the contract employees for that period, which was charged to maintenance work?

A. Which showed as maintenance work on the daily time reports.

Q. Of course, you had no way of knowing whether the time reports were correct, that the man was actually working [156] on maintaining the equipment? A. No, sir.

Q. And the second column shows the number, the aggregate number of hours by all of the employees, during the period on their daily time reports as driving? A. Yes, sir.

Q. And the third is the aggregate number of hours of all contract employees, as shown by their time reports for that period? A. Yes, sir.

Q. I think the other items are self-explanatory. Now, the first sheet of this exhibit for identification

(Testimony of Hugh Henry Leonard.)

is of all the employees, irrespective of the type of work they did? A. Yes, sir.

Q. The second page says "Analysis of type of work performed by California contract employees." What is that with reference to page 1?

A. That is the same information for the same period as reflected on page 1. However, it is broken down by the occupation of employees, that is, the drivers, operators and field mechanics.

Mr. Sandmeyer: We offer this document in evidence.

The Court: It will be received.

The Clerk: Defendant's Exhibit H in evidence.

(The document referred to was marked Defendant's Exhibit H, and was received in evidence.) [157]

DEFENDANT'S EXHIBIT H

Halliburton Oil Well Cementing Company

ANALYSIS OF TYPE OF WORK PERFORMED BY CALIFORNIA CONTRACT EMPLOYEES

(Information Reflected by Daily Time Tickets)

No. of Contract Employees	Period Covered	(1) Maintenance Work	(2) Driving	(3) Incidental Stop	(4) Waiting on Location	(5) Running Job	(6) Other Work	Total Hours Worked
37	July 5-August 1, 1942	1,796	1,408	76	1,332½	1,610½	921½	7,144½
40	January 3-30, 1943	2,815	2,208½	37½	1,687½	2,627	565½	9,941
51	July 5-31, 1943	5,574	1,978	111	1,129	2,891	434	12,117
53	January 2-29, 1944	5,922½	2,563½	125	2,149½	4,013½	551	15,325
	Total	16,107½	8,158	349½	6,298½	11,142	2,472	44,527½
		36.18%	18.32%	0.78%	14.15%	25.02%	5.55%	100%
	DRIVERS							
14	July 5-August 1, 1942	600½	690	26½	715½	399	246½	2,678
18	January 3-30, 1943	1,157½	1,190½	30½	1,049	699	279	4,405½
26	July 4-31, 1943	3,185½	1,078½	78	796½	818	143	6,099½
22	January 2-29, 1944	2,226	1,319½	79	1,367½	1,307	248½	6,547½
	Total	7,169½	4,278½	214	3,928½	3,223	917	19,730½
		36.34%	21.68%	1.08%	19.91%	16.34%	4.65%	100%

Defendant's Exhibit H—(Continued)

Analysis of Type of Work Performed by California Contract Employees—(Continued)

No. of Contract Employees	Period Covered	(1) Maintenance Work	(2) Driving	(3) Incidental Stop	(4) Waiting on Location	(5) Running Job	(6) Other Work	Total Hours Worked
	OPERATORS							
23	July 5-August 1, 1942	1,198½	718	49½	617	1,211½	675	4,466½
22	January 3-30, 1943	1,657½	1,018	7	638½	1,928	286½	5,535½
24	July 4-31, 1943	2,167	875½	33	332½	2,073	291	5,772
28	January 2-29, 1944	3,085½	1,218½	46	780	2,686½	302½	8,119
	Total	8,105½	3,830	135½	2,368	7,899	1,555	23,893
		33.92%	16.03%	0.57%	9.91%	33.06%	6.51%	100%
	MECHANICS							
1	July 4-31, 1943	221½	24	0	0	0	0	245½
3	January 2-29, 1944	611	25½	0	2	20	0	658½
	Total	832½	49½	0	2	20	0	904
		92.09%	5.48%	0	0.22%	2.21%	0	100%

[Endorsed]: Filed 5/17/44.

(Testimony of Hugh Henry Leonard.)

The Court: We will have our afternoon recess of 10 minutes.

(Short recess was taken.)

Mr. Sandmeyer: I ask the clerk to mark this document Defendant's Exhibit I for identification.

The Clerk: Defendant's Exhibit I for identification.

(The document referred to was marked as Defendant's Exhibit I, for identification.)

Q. By Mr. Sandmeyer: Mr. Leonard, I show you Defendant's Exhibit I for identification, it being a schedule desiganted "Average work hours per week". Was that prepared under your supervision and direction? A. Yes, sir.

Q. Please state from what sources that was made up and how it was made up.

A. The information was prepared from all the time reports turned in by California contract employees during the periods designated. And a tabulation was made of the hours reflected on the time reports. And from that information the various averages were determined.

Q. How did you select the periods designated?

A. They were selected so as to give a sample. There were approximately six-months intervals. Each period covered four complete weeks.

Mr. Sandmeyer: We offer the document in evidence.

The Court: It will be received. [158]

The Clerk: Defendant's Exhibit I into evidence.

(Testimony of Hugh Henry Leonard.)

(The document referred to was marked as Defendant's Exhibit I, and was received in evidence.)

DEFENDANT'S EXHIBIT I

Halliburton Oil Well Cementing Company

AVERAGE WORK HOURS PER WEEK

Four Week Period	Operators	Drivers	Mechanics	Total
July 5-August 1, 1942 Inc.....	48.5	47.8		48.2
January 3-30, 1943 Inc.....	62.9	64.8		63.7
July 4-31, 1943 Inc.	60.1	58.6	61.4	59.4
January 2-29, 1944 Inc.....	72.5	74.4	54.9	72.3
Average of Total for Sixteen Weeks	61.6	62.4	56.5	61.8

[Endorsed]: Filed 5/17/44.

Miss Williams: Might I ask one or two questions about this, Mr. Sandmeyer?

Mr. Sandmeyer: Yes.

Miss Williams: Just in order to understand it a little more clearly, Mr. Leonard, you said these averages were computed from all the payrolls. As an example, how did you compute the 48½ per cent for operators in the first period, given July 1 to August 1?

The Witness: Each week was separated. All the hours worked by all the operators were totaled and divided by the number of operators.

Miss Williams: Taking that same column, that

(Testimony of Hugh Henry Leonard:)

is, the first column, how did you compute the 61.6 per cent?

The Court: Do you mean the average?

Miss Williams: It is on the line average of total of 16 weeks. How was that 61.6 figure computed, would you mind telling us? That is at the bottom of the first column.

The Witness: That is the weighted average of hours worked for all the contract employees during the four periods that were listed.

Miss Williams: You are speaking now of this figure?

The Court: The average of the total for 16 weeks.

The Witness: That is the weighted average of the hours [159] worked of the operators during those four weeks.

Miss Williams: Will you explain what you mean by "weighted average"? Explain how you determined the weighted average.

The Witness: In the event there were five employees during one period and they had a total in the week—they had five weeks and they had a total of X number of hours, and 10 in the other period have X number of hours, the two were combined and divided by the 15. In other words, give effect to the number of employees involved in each of the separate periods.

Miss Williams: I am not sure I follow you exactly. Now, will you explain from the exhibit?

(Testimony of Hugh Henry Leonard.)

The first entry in the first column is July 5th to August 1.

The Witness: Yes.

Miss Williams: And the next one is January 3rd to 30th.

The Witness: Yes.

Miss Williams: Now, will you explain again with reference to those periods?

The Witness: July 5th to August 1st covers a 4-week period.

Miss Williams: Yes.

The Witness: And there were the time tickets of each individual employee which were totaled for the week. Say, this is the sum of 60. That same process was handled—it wasn't continued for each employee on the payroll for [160] that particular week.

Miss Williams: Each employee employed as an operator; is that it?

The Witness: That is right. And then the total of these weekly sums was determined by merely adding the figures *to determined.* And then divided by the number of weeks involved.

Miss Williams: You added the number of hours worked by all the employees; was that it?

The Witness: Well, it was each employee. It was handled as a separate matter. The total hours worked by an individual employee.

Miss Williams: Let's call him A.

The Witness: A worked 50 hours this week, B worked 20, C worked 10.

(Testimony of Hugh Henry Leonard.)

Miss Williams: All in the same period, July 5 to August 1?

The Witness: In one week of that period.

The Court: That is 80. What do you do with that 80?

The Witness: Divide by three.

The Court: There were three employees?

The Witness: Or three weeks.

Miss Williams: That is the way you got the figure 48.5 per cent?

The Witness: Yes.

Miss Williams: I would like to have you explain again, [161] because I don't quite understand it, how you got the total figure at the bottom, 61.6 per cent. The other is the straight average; is it not?

The Witness: Yes.

Miss Williams: This is a weighted average, you tell me. Will you explain that?

The Witness: Each seperate week was considered a man work week period. All the figures that had begn gathered were added together and we had a grand total.

Miss Williams: Let me make sure I know what you mean. You mean all the figures for the July 5 to August 1 period. Assuming that A also worked in the January 3 to 30, you added his hours again for that period and similarly for the other two periods?

The Witness: Yes.

(Testimony of Hugh Henry Leonard.)

Miss Williams: If you had employee B you added his hours?

The Witness: Yes.

Miss Williams: So you got the grand total of all the hours worked by all the operators in each of these four periods?

The Witness: Yes.

Miss Williams: What did you do with that?

The Witness: Also, at the same time we knew the number of man weeks. That is, each separate addition rerpesented a man work week. So we——

[162]

Miss Williams: In other words, 60 hours worked meant a work week?

The Witness: That is right. We divided the aggregate of all the work hours by the aggregate of all the man work weeks, and that gave us a weighted average.

Miss Williams: I see. Why didn't you have to do that for the period July 5 to August 1, because you had more than one week there that you didn't have to——

The Witness: The same principle.

Miss Williams: You applied the same principle?

The Witness: The same principle there.

Miss Williams: Yes. There is a column, the last column is entitled "Total." How did you determine the first figure in the column "Total", that is, 48.2 per cent?

(Testimony of Hugh Henry Leonard.)

The Witness: By the same principle. Added the total of the hours, determined for the operators, to the total of the hours determined for the drivers, and divided by the sum of the work week for operators and the work week for the drivers.

Miss Williams: Thank you very much. That is all.

Mr. Sandmeyer: I request the clerk to mark this document Defendant's Exhibit J for identification.

The Clerk: Defendant's Exhibit J for identification.

(The document referred to was marked as Defendant's Exhibit J, for identification.)

Q. By Mr. Sandmeyer: I show you, Mr. Leonard, [163] Defendant's Exhibit J for identification, which purports to be a schedule, but has no name. Was that prepared under your supervision and direction? A. Yes, sir.

Q. Will you please state the source from which the information thereon shown was obtained and how it was assembled, and so on?

A. It was prepared from the time records and the pay records. It involves certain information regarding 10 employees.

Q. How were those 10 employees selected?

A. A list alphabetically arranged was prepared of all the California contract employees who had been on the payroll and under contract on July 5, 1942, and were on the payroll on March 11, 1944,

(Testimony of Hugh Henry Leonard.)

nd were still working under the contract. And the rst 10 names on that list were selected, without egard to location, rate of pay or occupation.

Q. Proceed.

A. The information was prepared in this form: our periods were selected so as to give a rather mplete sample of the experiences of these various mployees.

Q. Was the same period selected for each employee?

A. The same period was selected for each employee. Each period comprises three complete work eeks. Shall I go into each column?

Q. Yes. [164]

A. The first columnary heading, the terminology "Period." Under that column or heading is sted each of the full three-week periods involved.

Q. There are four three-week periods for each those 10 employees?

A. Yes, with the same three week's period for ach of the employees.

Q. Yes.

A. The second column merely shows his occupaon. That is, his occupation at the date listed in olumn 4.

The third column shows the location in Calinia at which he was employed on the date listed column 4.

Column 4 is a date which, in all instances, presents a Saturday or the last day of a work

(Testimony of Hugh Henry Leonard.)

week. Therefore, the columnary heading is "Week ending".

Column 5, "Number of hours" is the heading. That column reflects the number of work hours shown on the time tickets for the week designated in column 4.

Q. That is, each of the three weeks in each of the periods selected? A. Yes, sir.

Q. All right.

A. Column 6 represents the basic hourly rate stipulated in the employee's contract on the date listed on column 4.

Column 7 represents the weekly guarantee stipulated in [165] the contract on the date listed in column 4.

Column 8 represents my understanding of what the Administrator considers as the regular hourly rate of pay for each of the employees listed in each of the weeks listed.

Q. That is, that is a computation, rather, of what would be his hourly rate of pay, computed according to your understanding, of what the plaintiff is contending in this case.

A. That is right.

Q. Your understanding of that is that the Administrator is contending that the amount of the weekly guarantee is salary that pays only for straight time for hours worked.

A. Yes, sir. That figure was arrived at by dividing the number of hours worked in each week into the weekly guarantee that was stipulated in

(Testimony of Hugh Henry Leonard.)

the employee's contract for that particular week. In other words, column 7 was divided by column 5, and the result is shown in column 8.

Mr. Sandmeyer: We offer this schedule in evidence.

The Court: It will be received.

The Clerk: Defendant's Exhibit J into evidence.

(The document referred to was marked as Defendant's Exhibit J, and was received in evidence.)

DEFENDANT'S EXHIBIT J

HALLIBURTON OIL WELL CEMENTING COMPANY

Period	Occupation	California Location	Hours Worked: Week Ending	Hours Worked: No. of Hours	Basic Hourly Rate in In Contract	Weekly Guaranty in Contract	Regular Hourly Rate of Pay per Administrator
Employee—H. L. ALEXANDER							
7-5-42 to 7-25-42 Inc.	Cementer	Montalvo	7-11-42	28	.46	$49.62	$1.77
	Cementer	Montalvo	7-18-42	41	.46	49.62	1.21
	Cementer	Montalvo	7-25-42	81½	.46	49.62	.61
1-3-43 to 1-23-43 Inc.	Cementer	Montalvo	1- 9-43	87	.48	51.92	.61
	Cementer	Montalvo	1-16-43	124	.48	51.92	.42
	Cementer	Montalvo	1-23-43	60	.48	51.92	.87
7-4-43 to 7-24-43 Inc.	Tester	Avenal	7-10-43	17	.55	58.85	3.46
	Tester	Avenal	7-17-43	118	.55	58.85	.50
	Tester	Avenal	7-24-43	70	.57	61.15	.87
1-2-44 to 1-22-44 Inc.	Tester	Norwalk	1- 8-44	66	.59	63.46	.96
	Tester	Norwalk	1-15-44	13	.59	63.46	4.88
	Tester	Norwalk	1-22-44	46	.59	63.46	1.38
Employee—THEODORE C. BECK							
7-5-42 to 7-25-42 Inc.	Cementer	Montalvo	7-11-42	52½	.48	51.92	.99
	Cementer	Montalvo	7-18-42	48½	.48	51.92	1.07
	Cementer	Bakersfield	7-25-42	84	.48	51.92	.62
1-3-43 to 1-23-43 Inc.	Cementer	Bakersfield	1- 9-43	36½	.52	55.38	1.52
	Cementer	Bakersfield	1-16-43	72½	.52	55.38	.76
	Cementer	Bakersfield	1-23-43	8	.52	55.38	6.92
7-4-43 to 7-24-43 Inc.	Cementer	Bakersfield	7-10-43	79½	.57	61.15	.77
	Cementer	Bakersfield	7-17-43	46	.57	61.15	1.33
	Cementer	Bakersfield	7-24-43	77	.59	63.46	.82
1-2-44 to 1-22-44 Inc.	Cementer	Bakersfield	1- 8-44	81	.59	63.46	.78
	Cementer	Bakersfield	1-15-44	46	.59	63.46	1.38
	Cementer	Bakersfield	1-22-44	85	.59	63.46	.75
Employee—JOHN N. BOGGS							
7-5-42 to 7-25-42 Inc.	Cementing Dr.	Avenal	7-11-42	39	.35	38.08	.98
	Cementing Dr.	Avenal	7-18-42	42	.35	38.08	.91
	Cementing Dr.	Avenal	7-25-42	58	.35	38.08	.66
1- 3-43 to 1-23-43 Inc.	Cementing Dr.	Montalvo	1- 9-43	77	.38	40.38	.52
	Cementing Dr.	Montalvo	1-16-43	101	.38	40.38	.40
	Cementing Dr.	Montalvo	1-23-43	47	.41	43.85	.93
7-4-43 to 7-24-43 Inc.	Cementer	Bakersfield	7-10-43	76	.50	53.08	.70
	Cementer	Bakersfield	7-17-43	78	.50	53.08	.68
	Cementer	Bakersfield	7-24-43	50	.50	53.08	1.06
1-2-44 to 1-22-44 Inc.	Cementer	Bakersfield	1- 8-44	65	.57	61.15	.94
	Cementer	Bakersfield	1-15-44	114	.57	61.15	.54
	Cementer	Bakersfield	1-22-44	45	.57	61.15	1.36

Employee—CURTIS R. CROSS							
7-5-42 to 7-25-42 Inc.	Tester	Avenal	7-11-42	73	.52	55.38	.76
	Tester	Avenal	7-18-42	75	.52	55.38	.74
	Tester	Avenal	7-25-42	56	.52	55.38	.99
1-3-43 to 1-23-43 Inc.	Tester	Avenal	1- 9-43	99	.54	57.69	.58
	Tester	Avenal	1-16-43	84	.54	57.69	.69
	Tester	Avenal	1-23-43	100	.54	57.69	.58
7-4-43 to 7-24-43 Inc.	Tester	Avenal	7-10-43	69	.59	63.46	.92
	Tester	Avenal	7-17-43	103	.59	63.46	.62
	Tester	Avenal	7-24-43	111	.59	63.46	.57
1-2-44 to 1-22-44 Inc.	Tester	Norwalk	1- 8-44	51	.59	63.46	1.24
	Tester	Norwalk	1-15-44	75	.59	63.46	.85
	Tester	Norwalk	1-22-44	116	.59	63.46	.55
Employee—SESIL D. FERRE							
7-5-42 to 7-25-42 Inc.	Bulk Cem. Dr.	Norwalk	7-11-42	28	.35	38.08	1.36
	Bulk Cem. Dr.	Norwalk	7-18-42	32	.35	38.08	1.19
	Bulk Cem. Dr.	Norwalk	7-25-42	33	.35	38.08	1.15
1-3-43 to 1-23-43 Inc.	Bulk Cem. Dr.	Norwalk	1- 9-43	62	.40	42.69	.69
	Bulk Cem. Dr.	Norwalk	1-16-43	35	.40	42.69	1.22
	Bulk Cem. Dr.	Norwalk	1-23-43	40	.41	43.85	1.10
7-4-43 to 7-24-43 Inc.	Cementer	Norwalk	7-10-43	57	.50	53.08	.93
	Cementer	Norwalk	7-17-43	62	.50	53.08	.86
	Cementer	Norwalk	7-24-43	37	.50	53.08	1.43
1-2-44 to 1-22-44 Inc.	Cementer	Norwalk	1- 8-44	52	.57	61.15	1.18
	Cementer	Norwalk	1-15-44	55	.57	61.15	1.11
	Cementer	Norwalk	1-22-44	60	.57	61.15	1.02

Defendant's Exhibit J—(Continued)

Period	Occupation	California Location	Hours Worked: Week Ending	Hours Worked: No. of Hours	Basic Hourly Rate in Contract	Weekly Guaranty in Contract	Regular Hourly Rate of Pay per Administrator
Employee—VAL FERRE							
7-5-42 to 7-25-42 Inc.	Cementing Dr.	Montalvo	7-11-42	32	.35	$38.08	$1.19
	Cementing Dr.	Montalvo	7-18-42	48	.35	38.08	.79
	Cementing Dr.	Montalvo	7-25-42	96	.35	38.08	.40
1-3-43 to 1-23-43 Inc.	Bulk Cem. Dr.	Montalvo	1- 9-43	55	.41	43.85	.80
	Bulk Cem. Dr.	Montalvo	1-16-43	79	.41	43.85	.56
	Bulk Cem. Dr.	Montalvo	1-23-43	64	.41	43.85	.69
7-4-43 to 7-24-43 Inc.	Cementer	Montalvo	7-10-43	72	.52	55.38	.77
	Cementer	Montalvo	7-17-43	105	.52	55.38	.53
	Cementer	Montalvo	7-24-43	44	.52	55.38	1.26
1-2-44 to 1-22-44 Inc.	Cementer	Montalvo	1- 8-44	59	.57	61.15	1.04
	Cementer	Montalvo	1-15-44	127	.57	61.15	.48
	Cementer	Montalvo	1-22-44	68	.57	61.15	.90
Employee—BURTON C. FRY							
7-5-42 to 7-25-42 Inc.	Cementer	Bakersfield	7-11-42	84½	.54	57.69	.68
	Cementer	Bakersfield	7-18-42	53	.54	57.69	1.09
	Cementer	Bakersfield	7-25-42	39	.54	57.69	1.48
1-3-43 to 1-23-43 Inc.	Cementer	Bakersfield	1- 9-43	84	.54	57.69	.69
	Cementer	Bakersfield	1-16-43	69½	.54	57.69	.83
	Cementer	Bakersfield	1-23-43	73	.54	57.69	.79
7-4-43 to 7-24-43 Inc.	Tester	Bakersfield	7-10-43	46	.54	57.69	1.25
	Tester	Bakersfield	7-17-43	59½	.54	57.69	.97
	Tester	Bakersfield	7-24-43	52½	.54	57.69	1.10
1-2-44 to 1-22-44 Inc.	Tester	Bakersfield	1- 8-44	108½	.59	63.46	.58
	Tester	Bakersfield	1-15-44	114½	.59	63.46	.55
	Tester	Bakersfield	1-22-44	63	.59	63.46	1.01
Employee—CLIFFORD HENDERSON							
7-5-42 to 7-25-42 Inc.	Cementer	Avenal	7-11-42	0	.51	54.81	.00
	Cementer	Avenal	7-18-42	37	.51	54.81	1.48
	Cementer	Avenal	7-25-42	45	.51	54.81	1.22
1-3-43 to 1-23-43 Inc.	Cementer	Avenal	1- 9-43	62	.54	57.69	.93
	Tester	Avenal	1-16-43	47	.54	57.69	1.23
	Tester	Avenal	1-23-43	85	.54	57.69	.68
7-4-43 to 7-24-43 Inc.	Cementer	Avenal	7-10-43	57	.59	63.46	1.11
	Cementer	Avenal	7-17-43	83	.59	63.46	.76
	Cementer	Avenal	7-24-43	4	.59	63.46	15.87
1-2-44 to 1-22-44 Inc.	Cementer	Avenal	1- 8-44	64	.59	63.46	.99
	Cementer	Avenal	1-15-44	76	.59	63.46	.84
	Cementer	Avenal	1-22-44	82	.59	63.46	.77

(Testimony of Hugh Henry Leonard.)

Miss Williams: When you have finished examining him on that schedule I would like to ask some questions.

Mr. Sandmeyer: All right. I call the court's attention to page 3 of this exhibit. [166]

The Court: Defendant's Exhibit J?

Mr. Sandmeyer: Yes. With respect to the employee Clifford Henderson. The last column is a computation of the hourly rate as computed by this witness on his understanding of the Administrator's position that the guarantee does not pay for overtime over 40 and up to 84 hours, but pays only for straight time. And shows the variation there from nothing, or 68 cents an hour to $15.87 an hour. That is one of extreme fluctuations of the hourly rate on the Administrator's theory, as this witness understands it.

Do you wish to make inquiry about this?

Miss Williams: Yes, if I may, Mr. Sandmeyer.

Mr. Leonard, since you have testified as to your understanding of the way in which the Administrator would compute the regular rate of pay, under these circumstances, I would like to ask you, directing your attention to the first rate of pay which you calculated there, the $1.77 rate for Mr. Alexander for the week of August 11, 1942.

Mr. Sandmeyer: You mean July 11th; don't you?

Miss Williams: July 11th. Excuse me. July 11th, yes. I said August 11th. July 11th, yes.

(Testimony of Hugh Henry Leonard.)

What is your understanding of the significance of that rate? What does that rate mean?

He has testified this is the way the Administrator would compute the regular rate of pay.

Mr. Sandmeyer: No, he didn't. [167] He computed that according to his understanding of what the Administrator would.

Miss Williams: I would like to ask, what is your understanding of the use *of* the Administrator would make of that rate, having computed it on the facts of that case?

The Witness: It is my understanding it would be used for overtime purposes.

Miss Williams: What do you understand to be "overtime" under the Fair Labor Standards Act?

Mr. Sandmeyer: I object to that as calling for a conclusion of the witness.

Miss Williams: This is his conclusion as to how the rate of pay would be computed under the Fair Labor Standards Act. We are going into his opinion about these matters now.

Mr. Sandmeyer: What difference would that make?

Miss Williams: What would you consider to be overtime hours under the Fair Labor Standards Act?

The Court: The witness, Mr. Sandmeyer, must have used some basis when he said this was his understanding of the way the Administrator would compute the pay. I think, in view of that state-

(Testimony of Hugh Henry Leonard.)

ment, it is proper for the government to go into that question, if the witness can answer it.

Mr. Sandmeyer: He did not compute more than the hourly rate. He did not say anything about what his understanding of overtime was. Particularly in my objection I was relying upon the court's ruling yesterday to the effect that in the [168] examination of the witness Miss Morse to the effect that while she is an expert and so on it was immaterial. What difference does it make what that witness thought? Frankly, I don't care too much.

The Court: Well, the question was put this way to the witness; How did you arrive at this figure? Now, he said that is his interpretation of the Administrator's method. Then it is fair to ask this question of the witness: How did you arrive at this figure? Is it not?

Mr. Sandmeyer: That wasn't the pending question.

The Court: Let us get that first and then I will rule.

The Witness: I divided the sum—pardon me.

Miss Williams: That was the court's question I think you are answering now; is it not?

The Court: Yes.

The Witness: I divided the sum shown under column 7 by the hours shown.

The Court: Column 7?

The Witness: By the number of hours shown during that week under column 5. In other words, I divided $49.62 by 28. That gave $1.77.

(Testimony of Hugh Henry Leonard.)

The Court: Per hour that would be?

The Witness: Yes.

The Court: I see what you did. Now, what is the next question.

Miss Williams. Incidentally, I would like to say, in [169] reply to Mr. Sandmeyer's argument, I am in agreement with him, your Honor, that no progress is made by asking witnesses to testify as to what the law means. But since Mr. Sandmeyer has offered this exhibit, which contains testimony as to what Mr. Leonard understands that to mean, I would like to question him a little further about it and make sure how complete his understanding is on the matter. I, therefore, asked him the question I first asked him, that is, what use would the Administrator make of this regular rate of pay which the witness has testified he thinks would be $1.77, as computed by the Administrator. I said what use would he make of it?

Mr. Sandmeyer: I submit this witness just wouldn't know.

The Court: This witness wouldn't know.

Miss Williams: He has testified he would use it in computing overtime. I thought what the Administrator would regard as overtime hours, to which he would apply that rate?

The Court: He has testified to that.

Miss Williams: He didn't answer that question.

The Court: He said he has taken this number of hours and divided it into the weekly guarantee

(Testimony of Hugh Henry Leonard.)

in the contract, and he gets $1.77. What is the next question.

Mr. Sandmeyer: That was the regular rate of pay on his understanding.

The Court: That is right.

Miss Williams:: That is his understanding of what the [170] Administrator would do in computing the regular rate.

The Court: That is right.

Miss Williams: I asked him for what purpose the Administrator would compute the regular rate, how would the Administrator apply it and use it, having computed it.

The Court: If you know, you can answer it.

Miss Williams: He answered that by saying he would apply that to the overtime hours. Then I said, "What would you regard as the overtime hours in applying it, how many hours, hours over what?"

The Witness: I presume over 40.

Miss Williams: Now, were any hours over 40 worked in this week?

The Witness: Not in that week.

Miss Williams: Could the regular rate of pay which you have computed have any significance to the Administrator?

Mr. Sandmeyer: I object to that.

Miss Williams: He is saying this is the way the Administrator would compute the rate. My point is the Administrator wouldn't compute the rate. It is utterly immaterial.

Employee—RAYMOND M. McADAMS							
7-5-42 to 7-25-42 Inc.	Cementing Dr.	Bakersfield	7-11-42	58	.35	38.08	.66
	Cementing Dr.	Bakersfield	7-18-42	52½	.35	38.08	.73
	Cementing Dr.	Bakersfield	7-25-42	72	.35	38.08	.53
1-3-43 to 1-23-43 Inc.	Cementer	Bakersfield	1- 9-43	70	.42	45.00	.64
	Cementer	Bakersfield	1-16-43	56½	.42	45.00	.80
	Cementer	Bakersfield	1-23-43	66	.46	49.62	.75
7-4-43 to 7-24-43 Inc.	Cementer	Bakersfield	7-10-43	57	.57	61.15	1.07
	Cementer	Bakersfield	7-17-43	34½	.57	61.15	1.77
	Cementer	Bakersfield	7-24-43	75	.57	61.15	.82
1-2-44 to 1-22-44 Inc.	Cementer	Bakersfield	1- 8-44	72½	.59	63.46	.88
	Cementer	Bakersfield	1-15-44	89½	.59	63.46	.71
	Cementer	Bakersfield	1-22-44	65	.59	63.46	.98
Employee—ROY W. PERKINS							
7-5-42 to 7-25-42 Inc.	Cementer	Bakersfield	7-11-42	67½	.54	57.69	.85
	Cementer	Bakersfield	7-18-42	36½	.54	57.69	1.58
	Cementer	Bakersfield	7-25-42	31½	.54	57.69	1.83
1-3-43 to 1-23-43 Inc.	Cementer	Montalvo	1- 9-43	49	.54	57.69	1.18
	Cementer	Montalvo	1-16-43	111	.54	57.69	.52
	Cementer	Montalvo	1-23-43	89	.54	57.69	.65
7-4-43 to 7-24-43 Inc.	Cementer	Montalvo	7-10-43	50	.59	63.46	1.27
	Cementer	Montalvo	7-17-43	91	.59	63.46	.70
	Cementer	Montalvo	7-24-43	60	.59	63.46	1.06
1-2-44 to 1-22-44 Inc.	Cementer	Montalvo	1- 8-44	84	.59	63.46	.76
	Cementer	Montalvo	1-15-44	61½	.59	63.46	1.03
	Cementer	Montalvo	1-22-44	79	.59	63.46	.80

[Endorsed]: Filed 5/17/44.

(Testimony of Hugh Henry Leonard.)

The Court: That answers itself. If there is no overtime you do not need to answer as to what somebody else would do.

Miss Williams: That is right. He has put the testimony in to show this is the regular rate on which overtime would be computed. [171]

The Court: There is none to be computed on it.

Miss Williams: That is right. This is the point about it, your Honor: Overtime would only be due if a good many more hours were worked, in which event the rate would be lower.

The Court: In excess of 40.

Miss Williams: Yes. It is, in a sense, an unfair—I withdraw that. I think that the rate that would ever be used by the Administrator, your Honor, would not be $1.77. There couldn't be $1.77 on this weekly guarantee. There couldn't be any $1.77 rate.

The Court: Not on that basis of hours.

Miss Williams: Yes, sir, your Honor.

The Court: That is right.

Miss Williams: It would be a much lower rate.

The Court: There would not be any at all.

Miss Williams: Now, I would like to ask one more question, Mr. Leonard. For Mr. Alexander the fourth week shown here, which is January 9, 1944, is 87 hours worked.

Now, you have shown the amount of his weekly guarantee and the hourly rate, regular rate of pay. Could you also tell us what the company actually paid him in that week?

(Testimony of Hugh Henry Leonard.)

The Witness: When I mentioned payroll record a moment ago, I merely used that to determine what the man's weekly guarantee might be at any given moment.

Miss Williams: In other words, I don't have to have the [172] exact amount. Can you say that the company paid him more in that week than $51.92?

The Witness: Yes.

Miss Williams: That is all, your Honor.

The Court: All right.

Q. By Mr. Sandmeyer: Mr. Leonard, I might call your attention to Mr. Alexander on page 1 on Exhibit J, for instance, for the work week of January 8, 1944. It shows he worked 66 hours. The contract rate per hour is 59 cents. According to your understanding of what the Administrator's contention is, the Administrator would contend his hourly rate was 96 cents; is that correct?

A. Yes, sir.

The Court: We will take our recess until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:35 o'clock p. m., May 17, 1944, an adjournment was taken until 10:00 o'clock a. m., Thursday, May 18, 1944.) [173]

Los Angeles, California,
Thursday, May 18, 1944, 10:00 A. M.

The Court: Mr. Cross, call the calendar.

The Clerk: No. 2912, L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor vs. Halliburton Oil Well Cementing Company, for further court trial.

Mr. Sandmeyer: Ready for the defendant.

Miss Williams: Ready for the planitiff.

The Court: Proceed.

HUGH HENRY LEONARD,

having been previously duly sworn, called on behalf of the defendant, resumed the stand.

Direct Examination

By Mr. Sandmeyer:

Q. Mr. Leonard, I show you the Exhibit 1-C designated as Payroll Chart. In the first column it is headed "Monthly salary equivalent to weekly column (2)". How did you arrive at the figures listed in column 1?

A. We took the contracts and translated them. The contracts provided for a weekly guarantee. We took the contracts and translated that weekly guarantee into a monthly equivalent by multiplying the guarantee in the contract by 52 and dividing by 12.

Q. That is, you followed in reverse the instructions set forth in Interpretive Bulletin No. 4 of the Wage and [175] Hour Administrator?

(Testimony of Hugh Henry Leonard.)

A. Yes.

Q. At the present time, Mr. Leonard, if you know, what is the least hourly rate any field employee is now receiving?

A. The contract of no field employee working under the contract plan provides for a basic hourly rate of less than forty cents.

Q. And the least weekly guarantee?

A. The weekly guarantee, the minimum of $42.69.

The Court: I would like to have the last answer read.

(The answer was read.)

The Court: I don't understand that. If no employee gets less than 40 cents an hour and then every employee gets a guarantee of $42.69, is that the minimum?

Mr. Sandmeyer: Whichever it is.

The Witness: He may get more than his weekly guarantee because for overtime hours that are not paid for by the weekly guarantee he gets time and a half the hourly rate for every hour he works in excess of that paid for by the weekly guarantee. Of course, a lot of them get a lot more than that.

The Court: I understand that. No employee gets less than 40 cents an hour?

Mr. Sandmeyer: That is right; straight time.

The Court: Yes. And then no employee gets less than $42.69? [176]

Mr. Snadmeyer: $42.69 a week.

The Court: Oh. That is the weekly rate.

(Testimony of Hugh Henry Leonard.)

Mr. Sandmeyer: That is the weekly guarantee, $42.69.

The Court: I understand it.

By Mr. Sandmeyer:

Q. They run up to 62 cents an hour?

A. Yes, the maximum hourly rate in any contract is 62 cents an hour.

Q. That is for straight time?

A. Straight time.

Q. With the weekly guarantee of $65.77?

A. Yes.

Q. The monthly equivalent of the minimum weekly guarantee would be what? A. $185.00.

Q. And the monthly equivalent of the maximum guarantee? A. $285.00.

The Court: $285.00 is what?

The Witness: The maximum equivalent of the maximum weekly guarantee.

The Court: And the other figure?

The Witness: The minimum, $185.00.

The Court: All right. Thank you.

By Mr. Sandmeyer:

Q. Now, on this Exhibit 1-C, column 4, the last column to the right, there are figures listed there under the [177] heading "overtime hourly rate". What relation do they have to the figures in column 3, which is headed "regular hourly rate per contract (1st 40 hours)"?

A. Each figure under column 4, headed "overtime hourly rate" is at least one and one-half times

(Testimony of Hugh Henry Leonard.)

the figure on the same line of column 3, headed "regular hourly rate per contract".

Q. And some of the figures in column 4 may be slightly in excess of one and one-half times the regular hourly rate? A. Yes, sir.

Q. I show you Plaintiff's' Exhibit 3-A, which is headed, "payroll periods in which guarantee was paid for work weeks in which no overtime was worked". If an employee worked a number of hours in a work week, which was less than enough computed at his hourly rate for forty hours, for the first forty hours, and one and one-half times the hourly rate for all hours over forty the company would pay him the amount of the weekly guarantee specified in his contract?

A. Yes, sir.

Q. Did the company consider it was obligated to do that? A. Yes, sir.

Q. I show you Plaintiff's Exhibit 4-A which is headed "payroll periods in which compensation was at daily rates prorated from guarantee". Now, the instances set forth in here are taken, as I understand it, from the bi-weekly [178] payroll records; which is your present pay period, is it not?

A. Yes, sir.

Q. If in any week the employee works only a part of the week, how do you determine his compensation for that week?

A. As I understand the question you mean an employee is on the payroll only part of the week?

Q. That is correct.

A. He receives pay for that part of the week

(Testimony of Hugh Henry Leonard.)

pro-rated into the ratio of the number of days on the payroll to the number of days in the week, which would be seven.

Q. That portion of the weekly guarantee, did you say?

A. The weekly guarantee. He receives that portion of the weekly guarantee or the amount calculated at his hourly rates. That is, the basic hourly rate in the contract for the first forty hours and not less than one and one-half times the basic hourly rate in the contract for the first forty hours calculations are made; the greater sum is then paid the employee.

Q. That is, if the hours worked, first forty hours, multiplied by the basic hourly rate, plus the number of hours over forty, multiplied by the figure in column 4 of the payroll chart, which is at least one and one-half times the hourly rate, the product of those two is greater than the pro-rated amount of the guarantee you pay him the calculation on the hourly rate basis? [179] A. That is right.

Q. If the pro-rata amount of his weekly guarantee is greater, you pay him that amount?

A. That is right.

Q. During the time in question did the company believe it was obligated to so pay its employees?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit No. 5, which is entitled "Table of total man-weeks of work performed by California contract employees during the period, July 5, 1942 to March 11, 1944, inclusive".

(Testimony of Hugh Henry Leonard.)

Have you made any calculation of the percentage of the number of man-weeks worked where the hours worked were less than forty, to the total man-weeks? A. Yes, sir.

Q. What is that percentage?

The Witness: May I have the question?

(The record was read.)

The Witness: In approximately fourteen per cent of the total man-weeks the hours of work did not exceed forty.

Q. By Mr. Sandmeyer: Go ahead and explain your answer if you need to.

A. I might explain it this way: Your question was asked a little differently than that, if I recall.

Q. I think your answer was what I had in mind.

Miss Williams: May the witness explain the answer a [180] little further, so we will be sure we understand the difference?

Mr. Sandmeyer: Yes.

The Witness: There were a total of 4,284 full man-weeks of work performed by the California employees during the period in question.

The Court: 4,284 what?

The Witness: Full man-weeks performed by California employees during the period July 5, 1942 to March 11, 1944, inclusive.

In approximately 593 or 14 per cent of the total, the man-work-weeks did not exceed forty hours.

Miss Williams: Thank you very much.

Q. By Mr. Sandmeyer: In how many of the work-weeks, man-work-weeks in the period involved

(Testimony of Hugh Henry Leonard.)

were the hours worked forty or more, but less than 84? Do you have the number?

A. I do at the table.

Q. You can get it.

Mr. Sandmeyer: Please read the question.

(The question was read.)

The Witness: In approximately 2,868 of the 4,284 man-weeks.

Q. By Mr. Sandmeyer: What perecntage would that be of the total? A. 67 per cent.

Q. Why do you say in approximately so many man-weeks? [181]

A. I have the information worked up slightly different, in which the work hours exceeded 40 and included 84. The question was less 84.

The Court: That does not mean very much to me, Mr. Sandmeyer, the way the question was asked, 40 or more, but less than 84. It might be 81.

Mr. Sandmeyer: That is right, it might be 41. We have them by five-hour periods on Schedule 5. But I was just giving the percentage which would show the percentage——

The Court: Over the 40 and under the 84. I see what you are getting at.

Mr. Sandmeyer: We have the detail on Exhibit 5 for every five-hour step.

The Court: Oh, yes. That would show them exactly what I had in mind.

Mr. Sandmeyer: Yes, sir.

The Court: All right.

(Testimony of Hugh Henry Leonard.)

Q. By Mr. Sandmeyer: Doesn't your calculation, Mr. Leonard, include the 40 in the 40 to 84?

A. Yes.

Q. That was my question.

A. It includes 84.

The Court: You said less than 84. That is what was confusing.

Mr. Sandmeyer: I see.

Q. By Mr. Sandmeyer: What is the figure exactly in which the hours worked were 40 or more, up to and including [182] 84? A. 2,866.

Q. And the percentage? A. 67 per cent.

The Court: Yes, that is clear.

Q. By Mr. Sandmeyer: From no hours to 39 hours how many work weeks were there?

A. 542.

Q. That is, man weeks? A. Man weeks.

Q. And that percentage is what?

A. 13 per cent.

The Court: That is over the 40?

Mr. Sandmeyer: That is under the 40.

Miss Williams: Mr. Sandmeyer, may I ask, the witness testified before that, as I understood the figures, the 14 per cent he gave a few minutes ago was intended to include hours through 40. I understand now it only includes the hours through 39.

The Witness: The answer a moment ago includes hours through 40.

Miss Williams: You calculated it on the chart.

The Witness: The chart will show there approximately 50 weeks that are exactly 40.

(Testimony of Hugh Henry Leonard.)

Miss Williams: In other words, these calculations aren't based on the chart. I wanted to get that straight. [183]

Mr. Sandmeyer: I will start over. I was trying to correct that.

Q. By Mr. Sandmeyer: So there won't be any misunderstanding, how many man weeks were there during the period involved in which the hours worked ranged from zero to 39, both inclusive?

A. 542.

Q. What per cent of that was the total?

A. 13 per cent.

Q. In how many man weeks were the hours worked 40 to 84, both inclusive.

A. 2,886; 67 per cent.

Q. And in how many work man weeks were the hours worked over 84? A. 856.

Q. What per cent? A. 20 per cent.

Q. When we say "hours worked" we mean you took from that or based that upon the records as disclosed by the payroll and the daily time sheets?

A. Yes, sir.

Q. That may include hours when no actual labor was performed, that they put down as waiting time or charged to maintenance when they were at the shop waiting for a job to come up?

A. Yes, sir. [184]

Q. And the total man weeks in the period I think you said was 4,284? A. Yes, sir.

Q. Is group insurance carried for the Halliburton Company employees?

(Testimony of Hugh Henry Leonard.)

A. Yes, sir. Halliburton employees have available two types of group insurance, a life policy and another policy which combines health, accident, hospitalization and surgical benefits.

Q. Does the company assume any obligation in connection with the group insurance?

A. In the life group plan the company guarantees employees that the rate will not exceed a certain figure, regardless of what the premium actually costs the company.

Q. Are the Halliburton Company employees entitled to a vacation with pay? A. Yes, sir.

Q. To what extent?

A. After one year's service each employee receives one week's vacation with pay. After two years service and for all subsequent years each employee receives two full weeks of vacation with pay.

Q. I call your attention to one sheet of Plaintiff's Exhibit 2, which happens to be a detached sheet, which is one of the payroll sheets headed "Bi-weekly contract payroll"; is that the payroll presently in use for the [185] field employees?

A. It is in use for the field contract employees.

Q. That is what I mean. They have signed written contracts with the company?

A. Yes, sir.

Q. Did you have anything to do with the designing or preparation of this payroll form?

A. It was designed under my supervision.

(Testimony of Hugh Henry Leonard.)

Q. What was the occasion for changing from the monthly payroll period to the bi-weekly period?

A. Mr. Saye, our General Counsel, informed me that an attorney for the Wage and Hour Division had advised him that certain additional information should be shown on each payroll sheet. That is, the hourly rate, the basic hourly rate, the overtime hourly rate, hours up to and including 40, all hours in excess of 40 and the guarantee.

We concluded that if all this additional information was to be necessary that we would go the next step and make it clearly simple, so that each week would rest on its own. And, to effectuate that purpose we changed to a bi-weekly payroll period.

The Court: I don't understand that bi-weekly.

Mr. Sandmeyer: Every two weeks.

The Court: That would not be bi-weekly, it would be bi-monthly.

Mr. Sandmeyer: They were on a semi-monthly payroll, [186] now they are bi-weekly, every two weeks.

Q. By Mr. Sandmeyer: Does the preparation of the payroll record on the bi-weekly payroll entail any more or less labor and calculation than the semi-monthly?

A. It requires considerable additional detail work by the force of employees in both field offices and in the home office at Duncan.

Q. Is the business in which the Halliburton Company engaged classified as a critical war industry by any governmental agency?

(Testimony of Hugh Henry Leonard.)

A. As far as I know all government agencies classify the Halliburton activities as essential, and certain of the employees are on the critical list prepared by the, I believe it is the War Manpower service. In any event, it is for Selective Service purposes.

Q. Nevertheless, some of your employees have entered the armed services; have they not?

A. Yes, a great number.

Mr. Sandmeyer: I would like to make reference to Defendant's Exhibit E, which is the Administration's reply brief in the Circuit Court of Appeals in the Fifth Circuit in the case of Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor vs. A. H. Belo Corporation, and particularly to page two to the first full paragraphs.

"In the first place, the situation where an employee [187] worked in excess of 54½, 54 or 50.3 hours was not a very real situation with appellee, since out of approximately 1,100 man work weeks (R194-337) only 71 involved such excess hours, and it should be noted that in only 39 of them did appellee pay the employees more than their guaranteed weekly wage, showing that the weekly wage, guaranteed by the contract, was the primary objective factor."

Miss Williams: If your Honor please, I am going to object to that and ask that it be stricken. Your Honor ruled yesterday when these briefs were offered they were not in as evidence. That may be

(Testimony of Hugh Henry Leonard.)

a proper matter for argument, but I don't think they can be used as evidence and they aren't binding on us, and they aren't evidence in this court.

The Court: No statement by counsel is evidence. It would be exactly the same if you now made the statement to the court. It is a statement to the court. It is not evidence. It could not be considered as evidence.

Miss Williams: Yes.

Mr. Sandmeyer: I only called the court's attention to it.

The Court: That is right. It is not evidence, counsel.

Q. By Mr. Sandmeyer: I show you, Mr. Leonard, Defendant's Exhibit D, which is a transcript of the record in the United States Circuit Court of Appeals, Fifth Circuit, [188] in the case of Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor vs. A. H. Belo Corporation. I will ask you whether or not you have examined that record, particularly at pages 194 to 337, and calculated the total number of man work weeks that are shown by the record in that case? A. Yes.

Miss Williams: Just a moment. I will object to that, your Honor, because I think now it is being offered.

The Court: The objection is sustained. It is a matter of argument on the evidence that is already introduced. Counsel may argue that the pattern followed by the witness is the same as that.

(Testimony of Hugh Henry Leonard.)

Mr. Sandmeyer: The only thing I have in mind is this man is an expert, and to have him make his calculation of comparison between the two cases. It is not for the purpose of proving there were that many work weeks involved. They are there; anybody can count them.

If they are in evidence counsel and the court can examine them. It is only for the limited purpose of having this man, who is qualified as an accountant, to make the percentage figures. I have his calculations on a form, typewritten, which I could offer merely for the purpose of showing the calculation, if that would be permissible.

Miss Williams: If your Honor please, I think that is a matter of argument. [189]

The Court: Yes, I agree with the government.

Mr. Sandmeyer: I didn't hear the court's ruling.

The Court: I will agree with the government. I think it is a matter of argument.

Q. By Mr. Sandmeyer: Mr. Leonard, has the Halliburton Oil Well Cementing Company made any applications to the National War Labor Board for approval of wage increases of field employees who are under contract, particularly including the so-called contract employees in California?

A. Two applications were filed with the National War Labor Board at Dallas involving salary increases for two classifications of contract employees in California. Two additional applications were filed with the National War Labor Board at Dallas involving certain information regarding all

(Testimony of Hugh Henry Leonard.)

of the contract employees of the company, including California.

Q. Did the National War Labor Board make any order upon those applications?

A. Yes, sir, all four applications, that is, applications requested certain rulings or certain increases. In all instances the rulings were given or the increases were granted.

Mr. Sandmeyer: I request the clerk to mark this group of documents for identification.

The Clerk: Defendant's Exhibit K for identification. [190]

(The document referred to was marked as Defendant's Exhibit K, for identification).

Miss Williams: May I take just a moment to see which ones are here?

Mr. Sandmeyer: Yes.

Miss Williams: I will compare them with the file, if you don't mind.

Mr. Sandmeyer: No.

Miss Williams: I am not familiar with them. May I address a question to counsel?

The Court: Yes.

Miss Williams: There are several different ones here, are there not, Mr. Sandmeyer?

Mr. Sandmeyer: Yes.

Miss Williams: Counsel, there seems to be only one here, Case No. 8-9958. Did you intend to offer them all at once?

Mr. Sandmeyer: One at a time.

(Testimony of Hugh Henry Leonard.)

Miss Williams: I misunderstood you. I thought you were offering more than one. Thank you. I see which one it is.

Q. By Mr. Sandmeyer: I show you defendant's Exhibit K for identification, which consists of three documents, and referring to the one entitled "Application for approval of a voluntary raise of salary rate adjustment", are you familiar with that? [191] A. Yes.

Q. Please state what it is.

Miss Williams: If your Honor please, I am going to object to this line of testimony because we are going into collateral issues here, I think. What the War Labor Board may or may not have taken into consideration, I suppose, or whether the War Labor Board did or did not indicate some approval of this plan—of course, as your Honor knows the sole function of the War Labor Board is to grant increases, to allow or disallow proposed increases in rates.

It seems to me any ruling of that kind they would make is completely and absolutely collateral and not binding on us in this court, and really has nothing to do with the issues before the court here.

The War Labor Board is not administering the Fair Labor Standards Act. It doesn't go into the matters in which we are concerned in administering the Fair Labor Standards Act, but merely allows or disallows proposed increases in rates of pay.

(Testimony of Hugh Henry Leonard.)

Mr. Sandmeyer: I would like to be heard on that.

The Court: What is the position of an individual citizen where two departments of the United States Government are in absolute conflict? If he goes one way he is going to go to jail. If he goes the other he is going to jail assuming that, what is the attitude of the government?

Miss Williams: I don't think they are in conflict [192] or can be, if your Honor please. The company would state to the War Labor Board what its rates are and ask for a right to make an increase. The War Labor Board would allow or disallow the application. It would not concern itself with whether those were actually its rates or not. It would not be concerned with the matter before the court here. That is my point.

Mr. Sandmeyer: I would like to be heard on that, your Honor. I think we can clear this thing up.

(Whereupon, further argument was had.)

The Court: I am going to sustain the government's objection to these exhibits. I will ask the defendant to make an offer of proof so the record will be clear, and so the defendant will be protected. I will allow an exception to the defendant.

Mr. Sandmeyer: I think possibly, your Honor, as I understand the Rules of Civil Procedure, where there are documents offered they may be marked as exhibits, which is more exact than I could possibly state it orally.

(Testimony of Hugh Henry Leonard.)

The Court: That is what I refer to. That is your offer of proof. Mark them as exhibits for identification and just put in the record enough to identify them.)

Mr. Sandmeyer: We have one marked Defendant's Exhibit K for identification.

The Court: Now state just what Defendant's Exhibit K is, just a sentence or two. [193]

Miss William: I can identify them by the War Labor Board number.

Mr. Sandmeyer: Defendant's Exhibit K is the application of the Halliburton Oil Well Cementing Company for approval of a voluntary wage or salary adjustment, National War Labor Board of the 8th Regional Office, bearing Case No. 8-9958, to which is attached the original order of the Board dated January 6, 1944. Exhibit K for identification consists of several documents. I wonder if we could have them clipped together some way.

The Clerk: Yes.

Mr. Sandmeyer: I now request the clerk to mark this document Defendant's Exhibit L for identification.

(The document referred to was marked as Defendant's Exhibit L, for identification.)

Mr. Sandmeyer: We offer in evidence Defendant's Exhibit L, being an application of defendant corporation to the National War Labor Board in Case No. 8-9963, and the original order thereon. I offer that, but I think I will make an offer as to all four.

(Testimony of Hugh Henry Leonard.)

The Clerk: Defendant's Exhibit M, for identification.

(The document referred to was marked as Defendant's Exhibit M, for identification.)

Mr. Sandmeyer: Defendant's Exhibit M for identification is an application to the National War Labor Board in Case No. 8-0-1971, with original order thereon. [193-A]

The Clerk: Then next will be Defendant's Exhibit N, for identification.

(The document referred to was marked as Defendant's Exhibit N, for identification.)

Mr. Sandmeyer: Defendant's Exhibit N for identification is the application of defendant corporation to the National War Labor Board in Case No. 8-0-1913.

I might state to the court that some of the applications in the Exhibits K, L, M and N are original applications or duplicate originals, and one or two are only copies. We endeavored to get certified copies at the regional office of the National War Labor Board and were advised the file was on its way out here.

We offer to prove that each of the applications, the originals were filed with the National War Labor Board on or about the dates of the respective applications by defendant corporation, and each one of those is an original order.

We now offer in evidence the documents marked

(Testimony of Hugh Henry Leonard.)

for identification as defendant's Exhibits K, L, M and N."

Miss Williams: We make the same objection.

The Court: Now, I think, Mr. Sandmeyer, you may have to go a little further than that. Rule 43 of the Federal Rules of Civil Procedure states:

"In an action tried by a jury, if an objection to a question propounded to the witness is sustained [193-B] by the court, the examining attorney will make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is priviledged."

I call attention to the fact of what he expects to prove. I think that ought to be added.

Mr. Sandmeyer: I expect to prove by these documents they are respectively and each of them an application of the defendant to the National War Labor Board for approval of a wage increase of the defendant's field employees, including those

(Testimony of Hugh Henry Leonard.)

in California; each of them affects the contract field employees of defendant in California; and that in those applications is set forth or attached thereto a copy of the form of written contract between defendant corporation and each of the contract field employees in California; and that the method of payment under such contract is set forth in the application, containing also [193-C] the average of their weekly compensation, I believe; and that annexed to each of those exhibits for identification is an order of the National War Labor Board granting the respective applications; that the offered testimony will prove or tend to prove that the National War Labor Board was required under the law to pass upon the validity of defendant's contract and the operation of defendant thereunder; and specifically was required to determine, first, what the hourly rate of the respective employees was for whom an adjustment of wage was requested. It was likewise required to rule upon the question of whether or not the guarantee was a guarantee of payment for hours worked at regular time for the first 40 hours, at time and a half for all hours over 40, or whether it was merely a weekly salary at straight time for hours worked.

And further, it necessarily had to determine whether the hour rates specified in the contract or the weekly guarantee determined the respective employee's rate of pay. And it necessarily was required under the law to determine whether or not the contract between the defendant corporation

(Testimony of Hugh Henry Leonard.)

and its California contract employees, or the operation of defendant thereunder, in any respect violated the Fair Labor Standards Act of 1938. And that such evidence is material and relevant to the issues in this case.

The Court: The government's objection will be sustained. An exception will be allowed the defendant. [193-D]

Miss Williams: If your Honor please, I would like to state this is rather a novel question to me, or novel procedural point. We can't make a counter-offer because we are not at liberty to offer these files..

Would your Honor permit us to make an offer, after the close of the case, a counter-offer of proof, if the Board permits us to offer the file? Your Honor suggested if the evidence went in you might subpoena the War Labor Board files.

The Court: I was stating the general rule of where files of a bureau of the government claim a matter to be confidential. I was stating the general rule.

As I stated, it had no relation to this, but the request of the government would not be proper in view of the fact there is no evidence before the court. This is exactly the same as if it was still in the file of Mr. Sandmeyer. So there isn't anything to answer at all, as far as I am concerned.

Miss Williams: Thank you. [193-E]

The Court: Proceed, Mr. Sandmeyer.

Mr. Sandmeyer: That is all. You may cross examine.

(Testimony of Hugh Henry Leonard.)

Cross Examination

By Miss Williams:

Q. Mr. Leonard, I will now hand you Government's Exhibit 1-D in evidence, and direct your attention to page 2, the paragraph which reads as follows:

> "Irregular hour field employees are now working and will continue to work on a monthly minimum salary basis; however, for contract purposes, the monthly salary is reduced to an equivalent weekly salary by multiplying the monthly salary by 12 (annual salary) and dividing the annual salary by 52 (weekly salary)."

You are familiar with that document, are you not, Mr. Leonard? A. I am.

Q. Did you testify yesterday that you had something to do with the preparation of it?

A. Yes.

Q. Isn't the statement in that document contrary to the statement you made on the stand this morning in respect to the manner in which the weekly guarantee was calculated? A. No.

Q. Didn't you testify that you calculated the monthly from the weekly, rather than the weekly from the monthly? [194]

A. I testified I did in preparing that chart. I didn't testify I did in determining a weekly guarantee.

Q. Thank you. That clears up that discrepancy,

(Testimony of Hugh Henry Leonard.)

or what appeared to me to be a discrepancy, I mean. I just want to ask you another question here, to be sure I understand your testimony. You testified, I believe, that the minimum rate now being paid is 40 cents? A. Basic rate.

Q. Excuse me. The minimum rate in the contract now shown is 40 cents and that the minimum weekly guarantee is $42.69? A. Yes.

Q. Showing you Government's Exhibit 1-C I ask you, with reference to that exhibit, if your testimony means then that the first seven groups of rates on that chart are no longer in use.

A. Yes.

Q. I am going back just a moment to make sure I understand your figures on percentage of man weeks in which the hours did not exceed 40. Plaintiff's Exhibit 5 in evidence was, I believe, the source material you used in making those percentage calculations? A. Yes.

Mr. Sandmeyer: He actually prepared Exhibit 5, from which you copied it. 195]

Miss Williams: Yes, I understood that, Mr. Sandmeyer.

Q. By Miss Williams: All I want to do is make sure how you calculated these percentages. As Plaintiff's Exhibit 5 will show the hours are shown, the hours worked are shown in five-hour intervals; is that correct?

A. Yes.

Q. One of them is hours 35 to 39? A. Yes.

(Testimony of Hugh Henry Leonard.)

Q. Now, you testified that 14 per cent of the total man-weeks did not exceed a certain number of hours. Was that 40 hours or 39 hours? That is all I want to know.

A. That was 40 hours, that testimony.

Q. And 13 per cent did not exceed 39?

A. Yes.

Q. Is that correct? A. Yes.

Miss Williams: Thank you. I have no further questions.

Mr. Sandmeyer: That is all.

The Court: That is all.

(Witness excused.)

Mr. Sandmeyer: I think we will call Mr. Saye somewhat out of order, but for convenience.

BEN F. SAYE,

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination [196]

The Clerk: State your full name.

The Witness: Ben F. Saye.

The Clerk: Will you take the stand, please?

By Mr. Sandmeyer:

Q. Where do you reside, Mr. Saye?

A. Duncan, Oklahoma.

Q. What is your occupation or profession?

(Testimony of Ben F. Saye.)

A. I am a lawyer.

Q. Have you any connection with the Halliburton Oil Well Cementing Company? A. Yes, sir.

Q. In what capacity?

A. I am general attorney for the company; also a director of the company.

Q. That is at its head office at Duncan, Oklahoma? A. Yes, sir.

Q. Did you have anything to do with the preparation of the forms of contract marked herein as Plaintiff's Exhibits 1-A and 1-B? A. Yes, sir.

Q. What did you have to do with them?

A. Well, I prepared them. Exhibits 1-A and 1-B, is it?

Q. Yes.

A. The first one was a letter from Mr. Halliburton, which he cooperated with me in preparing. The clauses with reference to the payment of the hourly [197] rate and weekly guarantee and wage of the employee I prepared definitely. He and I perhaps corroborated in the others.

Q. That was prepared shortly after the decision of the United States Supreme Court in the case of Walling vs. A. H. Belo Corporation?

A. I believe immediately after I had read the decision.

Q. You relied upon that case in the preparation of that contract? A. Yes, sir.

Q. Likewise, in the preparation of the form of contract marked in this case as Plaintiff's Exhibit 1-B? A. I did.

(Testimony of Ben F. Saye.)

Q. What was the occasion, if any, for the preparation of the form of contract designated Plaintiff's Exhibit 1-B?

A. The first contract did not make any provision for increase in wages, the hourly rate or the weekly guarantee. And likewise, it did not make any provision with reference to whether our employees would be special employees of the operator when they were out on the jobs, which, for purposes other than the Wage and Hour, was material to our operations.

Q. That is, before you prepared the second form of contract if a man got an increase you would have to have him sign a new contract?

A. I believe the contract within itself provided every time he got an increase he would have to execute a new contract. It is my recollection of Form 1, at any rate, it [198] did not make any provision to take care of increases.

Q. I call your attention to Exhibits 1-N, -O, and -P.

The Court: Those are the defendant's exhibits?

Mr. Sandmeyer: No, those are plaintiff's exhibits attached to the pre-trial statement. I assume it is in evidence, as well as all the other exhibits attached to it. The whole pre-trial statement went in.

The Court: The reason I asked that is we use letters for the defendant and when you call attention to those letters you might call attention to the exhibit itself.

(Testimony of Ben F. Saye.)

Mr. Sandmeyer: I called them 1-N, 1-O and 1-P.

The Court: I am sorry.

Q. By Mr. Sandmeyer: Did the letter from Mr. Stellern of the Wage and Hour Division, U. S. Department of Labor, dated August 8, 1941, which is marked Exhibit N, come to your attention?

A. It did.

Q. After you wrote the letter to Mr. Stellern, which is marked Exhibit O, you then received the letter from him marked Exhibit P?

A. Not from him.

Q. From Mr. Anson McArthur of the Wage and Hour Division; is that correct?

A. Of Los Angeles?

Q. Yes. [199] A. Yes, sir.

Mr. Sandmeyer: Now, I would like to read to the court all these letters, these three letters.

The letter dated August 8, 1941, addressed to Halliburton Oil Well Cementing Company is as follows:

"Gentleman:

"The Wage and Hour Division is conducting a nation-wide drive to establish compliance with the provisions of the Fair Labor Standards Act.

"In order to determine whether your business comes under the jurisdiction of the Division with respect to interstate commerce, we ask that you fill out the attached form and return it here at once in the enclosed envelope, which requires no postage.

(Testimony of Ben F. Saye.)

We are also enclosing for your information a copy of the Employer's Digest of the Act.

"Thank you for your cooperation.

"Very truly yours,

"J. A. Stellern."

Now Exhibit 1-O:

"Dear Sir:

"Your letters of August 8 addressed to this company at its Los Angeles and Ventura, California, offices have been forwarded to this office to answer.

"Halliburton Oil Well Cementing Company is [200] engaged in the business of manufacturing and selling oil field equipment and in various service activities such as oil well cementing, acidizing, testing, electrical well logging, etc. Its equipment is available for service in all of the oil fields in the United States and it is actively engaged in business in seventeen different states. Its general office is at Duncan, Oklahoma, where its books and records are kept, showing names of all of its employees, the amount of wages paid them, the hours worked, etc. All payroll checks are issued from its Duncan, Oklahoma, office.

"We have received inquiries from other states outside of Region 14 but, since our general office is located in Region 14, the inquiries from states outside that region have been referred to Mr. G. C. Street, Jr., Regional Director for Region 14, whose office is 824 Santa Fe Building, Dallas, Texas.

(Testimony of Ben F. Saye.)

"This company is complying with the Wage and Hour law and has had but one problem that has caused any difficulty. That problem is what constitutes 'hours worked' for some of our field employees or servicemen who operate our service equipment. These men are subject [201] to call for duty 24 hours per day but, actually, work a comparatively few hours per day. We have discussed this problem with the Wage and Hour Division for this region and they are thoroughly familiar with the problem and with our arrangement with our employees.

"As this company is operating in states located in ten of the fifteen Wage and Hour Division regions, it would be a great convenience to us if inquiries from the various regions could be referred to the Wage and Hour Division for this region, and if it would be satisfactory to you to refer this matter to the Regional Director of this region, we would appreciate your doing so. If such an arrangement would not be satisfactory with you, we will complete and forward you the statements of compliance which you mailed to our California offices.

"Will you please advise me in this regard?

"Very truly yours,

"Ben F. Saye."

The Court: We have had no recess this morning, so we will adjourn now until 2:00 o'clock.

Mr. Sandmeyer: I remember, your Honor, the

(Testimony of Ben F. Saye.)

reason we put this man on. Mr. Duke is here from Texas and he has an engagement, and he wanted to hear Mr. Saye's testimony [202] before he left.

I will waive the reading of this letter. I think I can finish in 10 minutes, if it is agreeable.

The Court: Proceed.

Q. By Mr. Sandmeyer: After you received this letter from Mr. McArthur stating, "We are referring this matter to our regional office in San Francisco with the recommendation that the inspection of this company be handled through your main office in Duncan, Oklahoma. Unless you hear otherwise from us it will not be necessary for you to submit the form to Los Angeles," did you hear further from the Los Angeles office?

A. I never did.

Q. What was your belief as to whether that matter, as to the California employees, was still in the California office or in Region 14's office?

A. I understood it to have been referred to Dallas.

Q. After these contracts were put into effect in July of 1942, when was the first time, to your knowledge, that anyone came to the Duncan, Oklahoma, office or the California office, for that matter, with respect to inspecting the records?

A. When was the first time?

Q. After July, 1942.

A. It was in the early fall, I would say Sep-

(Testimony of Ben F. Saye.)

tember, October, or perhaps the early part of November. The exact [203] date I can't give you.

Q. That was at the Duncan office?

A. Yes.

Q. Who came? A. Mr. Hall.

Q. At that time did you show to him the written contracts between the company and the respective field employees who had signed the same?

A. I did. That is, I showed him the form.

Q. You showed him the form? A. Yes.

Q. What, if anything, did Mr. Hall say?

A. He said, "That is the Belo contract."

Q. Who was Mr. Hall, incidentally?

A. Mr. Hall was the inspector, one of the inspectors who had previously been there and checked our records, and with whom I had conferred continuously for months, I might say, relative to our compliance.

Q. Did he make any inquiry as to payment of additional overtime? A. He did.

Q. What did he say, or ask?

A. He asked me if any of our employees were working over 84 hours. I told him they were.

He asked if we were paying them at the overtime rate specified in the one and a half times the basic hourly rate [204] in the contract; the specified rate in the contract for hours over 84, in addition to the weekly guarantee.

Q. And your reply?

A. That we were paying them.

(Testimony of Ben F. Saye.)

Q. Did Mr. Hall make any examination of your records at that time?

A. Yes, I went with him to the payroll department and he inspected the payrolls, to see for himself that that statement was true.

Q. Did he examine the records? A. Yes.

Q. On that occasion did Mr. Hall make any criticism of the written contracts or the method of your compensating your contract employees thereunder, or with your records, or any other criticism? A. Not the slightest.

Q. Now, I will ask you this: Later in the fall of 1942 did you have any inquiry from the Los Angeles office with respect to a request from the Wage and Hour Division, that is, any inquiry from Mr. Lacy, the superintendent?

The Witness: Read the question.

(Question read.)

A. I did.

Q. By Mr. Sandmeyer: Can you fix the time, approximately?

A. I think it was about in November. I have a letter, [205] I believe, which will show.

Q. You may refer to it.

A. October 16, 1942.

Q. Well, had Mr. Lacy——

A. An air mail letter he wrote me regarding the matter. And I believe he had telephoned me previous to the letter in regard to the same matter.

Q. What was the telephone inquiry?

(Testimony of Ben F. Saye.)

A. It was that representatives of the Wage and Hour department wished to inspect our records. I believe it also included the request to take photostatic copies of them. I told them to let them have anything they wished.

Q. Was that telephone conversation confirmed by letter from Mr. Lacy to you? A. Yes, sir.

Q. Did you make a reply to Mr. Lacy about it?

A. Yes, sir.

Mr. Sandmeyer: We would like to offer the letter from Mr. Lacy to Mr. Saye dated October 16, 1942, and the carbon copy of Mr. Saye's letter to Mr. Lacy dated October 19, 1942 as one exhibit.

Miss Williams: We have no objection to their receipt in evidence.

The Court: They may be received in evidence. They may be marked defendant's exhibit next in order.

The Clerk: Defendant's Exhibit O. [206]

(The documents referred to were marked as Defendant's Exhibit O, and were received in evidence.)

(Testimony of Ben F. Saye.)

DEFENDANT'S EXHIBIT O

Erle P. Halliburton, President
Jno. C. Halliburton, Vice-President
A. D. Stoddard, Vice-President
C. P. Parsons, Vice-President
Jay Taylor, Vice-President
L. D. Campbell, Secretary-Treasurer
Hugh H. Leonard, Ass't Sec'y-Treas.

Halliburton
Patented Process
Oil Well Cementing Co.
Halliburton Building
1709 West Eighth Street
Los Angeles, California
FAirfax 2345

October 16, 1942

Air Mail
Mr. Ben F. Saye, General Counsel
Halliburton Oil Well Cementing Co.
Duncan, Oklahoma

Dear Sir:

Mr. Phillips and Mr. H. E. Durham, representatives of the United States Department of Labor, Wage and Hours Division, called yesterday and requested that we allow them to examine our payroll records and time reports commencing with the first of this year. As you know we have on file here duplicate copies of all payroll sheets for this district and also copies of all time reports. It is these records that are being examined.

(Testimony of Ben F. Saye.)

We asked these men if there was any special reason why the examination should be made here rather than in our home office and they told us that their instructions were to obtain the information they needed here. Furthermore they told us that our Mr. Ben Saye had previously stated that any of the Company's field offices would cooperate in any way possible.

As customary in cases of this kind we have been unable so far to find out the reason for this investigation or in which man's hours they are interested.

If anything further develops pertaining to this case we will advise you immediately.

Yours very truly,
HALLIBURTON OIL WELL
CEMENTING CO.
By J. E. LACY
J. E. Lacy
By H. R. MILES

JEL:AZ

(Copy)
October 19, 1942

Mr. J. E. Lacy,
1709 West Eighth Street,
Los Angeles, California.

Dear Sir:

This will acknowledge receipt of your Airmail letter of October 16 advising that Mr. Phillips and Mr. H. E. Durham, representatives of the United

(Testimony of Ben F. Saye.)

States Department of Labor, Wage and Hours Division, have requested that you allow them to examine our payroll records and time reports commencing with the first of this year.

The Law permits such investigation at any time either at the home office or at a division office by any duly authorized representative of the Department of Labor. The only thing we should be certain about is that Mr. Phillips and Mr. Durham are the duly authorized representatives of the Department of Labor. I am sure they have presented proper credentials but, if not, they will do so upon your request.

Representatives of the Department of Labor have previously checked our records at various other division offices and the request to investigate your records there is not out of the ordinary.

I assume that your records will show that you are strictly complying with the instructions furnished you from the Duncan office, which we understand to be in strict compliance with the Wage and Hour Law. Therefore, we are always glad for a representative of the Wage and Hour Division to visit us and inspect our records so that they will know we are complying with the Law. If, through inadvertence, we have failed to comply in any particular, we will be glad to have the Wage and Hour Division point out in what respects we are failing to comply.

I assume that Mr. Phillips and Mr. Durham are from the Los Angeles office and would, naturally,

(Testimony of Ben F. Saye.)

not want to come to Duncan to inspect the records here.

I shall be glad if you will advise us of anything that they find they think is not in compliance with the law.

Very truly yours,
BEN F. SAYE.

BFS:bb

[Endorsed]: Filed 5/18/44.

Mr. Sandmeyer: I won't take time to read those now.

Q. By Mr. Sandmeyer: Between the time Mr. Hall was there and the time you had this telephone conversation and letter from Mr. Lacy——

The Court: Who is Mr. Lacy?

Mr. Sandmeyer: He is the superintendent in California, the man that was on the stand.

The Witness: He testified here yesterday.

The Court: He was not identified as the same man.

Q. By Mr. Sandmeyer: That is the superintendent in California?

A. Yes, sir.

Q. Between the time that Mr. Hall was at Duncan, which you testified about, and the time you had the call from Mr. Lacy, had you had any contact or communication from the Wage and Hour Division with respect to the Halliburton employees?

A. No, sir.

(Testimony of Ben F. Saye.)

Q. Thereafter, did you have any notice from the Wage and Hour Division claiming or asserting the Halliburton Company was not complying with the Fair Labor Standards Act up to the time this action was filed, commenced by filing the complaint in this court? A. I never did. [207]

Mr. Sandmeyer: You may cross examine.

Miss Williams: No questions.

The Court: That is all. Thank you.

(Witness excused.)

The Court: We will recess until 2:00 o'clock.

Mr. Sandmeyer: Thank you, your Honor, for permitting us to finish.

(Whereupon, at 11:55 o'clock a.m., a recess was taken until 2:00 o'clock p.m.) [208]

Los Angeles, California
Thursday, May 18, 1944, 2:00 P. M.

The Court: Mr. Cross, call the calendar.

The Clerk: No. 2912, L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, vs. Halliburton Oil Well Cementing Company, for further trial.

The Court: Proceed.

Mr. Sandmeyer: With the court's permission I would like to read the two letters marked Defendant's Exhibit O.

The Court: Proceed.

Mr. Sandmeyer: One is a letter from Mr. Lacy

to Mr. Ben F. Saye, General Counsel, Duncan, Oklahoma, dated October 16, 1942:

"Dear Sir:

"Mr. Phillips and Mr. H. E. Durham, representatives of the United States Department of Labor, Wage and Hours Division, called yesterday and requested that we allow them to examine our payroll records and time reports commencing with the first of this year. As you know we have on file here duplicate copies of all payroll sheets for this district and also copies of all time reports. It is these records that are being examined.

"We asked these men if there was any special reason why the examination should be made here [209] rather than in our home office and they told us that their instructions were to obtain the information they needed here. Furthermore they told us that our Mr. Ben Saye had previously stated that any of the company's field offices would cooperate in any way possible.

"As customary in cases of this kind we have been unable so far to find out the reason for this investigation or in which man's hours they are interested.

"If anything further develops pertaining to this case we will advise you immediately.

"Yours very truly,"

The copy of Mr. Saye's letter to Mr. Lacy at Los Angeles is dated October 19, 1942, and reads as follows:

"This will acknowledge receipt of your air mail

letter of October 16 advising that Mr. Phillips and Mr. H. E. Durham, representatives of the United States Department of Labor, Wage and Hours Division, have requested that you allow them to examine our payroll records and time reports commencing with the first of this year.

"The law permits such investigation at any time either at the home office or at a division office by a duly authorized representative of the Department of Labor. The only thing we [210] should be certain about is that Mr. Phillips and Mr. Durham are the duly authorized representatives of the Department of Labor. I am sure they have presented proper credentials but, if not, they will do so upon your request.

"Representatives of the Department of Labor have previously checked our records at various other division offices and the request to investigate your records there is not out of the ordinary.

"I assume that your records will show that you are strictly complying with the instructions furnished you from the Duncan office, which we understand to be in strict compliance ith the Wage and Hour law. Therefore, we are always glad for a representative of the Wage and Hour Division to visit us and inspect our records so that they will know we are complying with the law. If, through inadvertence, we have failed to comply in any particular, we will be glad to have the Wage and Hour Division point out in what respects we are failing to comply.

"I assume that Mr. Phillips and Mr. Durham are from the Los Angeles office and would, naturally, not want to come to Duncan to inspect the records here.

"I shall be glad if you will advise us of [211] anything that they find they think is not in compliance with the law.

"Very truly yours,

"BEN F. SAYE."

Plaintiff's Exhibit 2, your Honor, is the original payroll records which were brought out here from the home office at Duncan and at the time they were introduced I think there was the suggestion or stipulation—I don't know which—that copies which were at the Los Angeles office and which are the ones that the representatives of the Wage and Hour Division actually examined are here now.

The reason for that is that at the time we thought the subpoena duces tecum called for original records, and that is the reason we produced the originals.

May it be stipulated, Miss Williams, that these copies are duplicates and can be substituted in lieu of Exhibit 2?

Miss Williams: Yes, Mr. Sandmeyer.

Mr. Sandmeyer: Will the court make an order on that?

The Court: So ordered.

Mr. Sandmeyer: May the clerk be instructed to deliver the originals to counsel for the defendant?

The Court: So ordered.

The Clerk: Here are Plaintiff's Exhibit No. 2 originals.

Mr. Sandmeyer: You want to cancel the stamp, don't you? [212]

The Clerk: Yes.

Mr. Sandmeyer: With the court's permission we would like to recall Mr. John Elmer Lacy for a few questions.

The Court: Take the stand, Mr. Lacy.

JOHN ELMER LACY,

recalled as a witness on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Sandmeyer:

Q. You have previously testified in this case and have been sworn; have you not?

A. Yes, sir.

Q. You were in court this morning and heard Mr. Saye's testimony? A. Yes, sir.

Q. According to that testimony he received a call and a letter from you around October 16, 1942, advising that some representatives of the Wage and Hour Division had come to the Los Angeles office and wanted to inspect and make copies of the records there? A. Yes, sir.

Q. Do you recall that situation?

A. Yes, sir.

(Testimony of John Elmer Lacy.)

Q. Did you talk to them?

A. Yes, sir. [213]

Q. Now, Mr. Saye testified that he had told you to let them examine and take copies of anything they wanted to; is that correct? A. Yes.

Q. Did you so advise the representatives?

A. Yes, sir.

Q. Did you make available there in the office a desk and space for them to examine and make copies of your records? A. Yes, sir.

Q. Did you furnish them with all the records that they called for? A. Yes, sir.

Q. Later what happened with respect to making copies of your records?

A. Well, if I remember correctly they decided it would be too great a task to do it and they asked permission to take them out and make photostatic copies of them, or something to that effect.

Q. Did you permit them to do that?

A. Yes.

Q. They came back from time to time, up to and after the commencement of this action; did they not? A. Yes.

Q. And up to the present time have you permitted them to inspect and make copies and even take away from your office any record they asked for? [214]

A. Yes, sir. I believe I called Mr. Saye again when they asked to take them out.

Q. What did he say?

(Testimony of John Elmer Lacy.)

A. He said that was perfectly all right, to let them take them out.

Q. You so advised the representatives?

A. Yes, sir.

Q. Now, at the time they first called at your office in October, 1942, or at any time after that, up to the commencement of this action, did they ever tell you why they were making the inspection?

A. No, sir.

Q. At any time from the first time they were at your office, about the middle of October, 1942, until the commencement of this action did any representative of the Wage and Hour Division ever notify you or your office that the Halliburton Company in any respect had failed to comply with the Fair Labor Standards Act or any of the regulations thereunder? A. No, sir.

Mr. Sandmeyer: That is all. You may cross examine.

Miss Williams: No questions, Mr. Lacy.

The Court: That is all.

(Witness excused.)

Mr. Sandmeyer: I will call Mr. Harris Lee Alexander. [215]

HARRIS LEE ALEXANDER

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Harris Lee Alexander.

By Mr. Sandmeyer:

Q. Where do you reside, Mr. Alexander?

A. Whittier, California.

Q. Are you employed by the Halliburton Oil Well Cementing Company? A. I am.

Q. In what capacity?

A. I am a tester, formation tester.

Q. When did you first enter the employ of the company? A. 1939.

Q. Have you worked for them continuously since? A. Yes, sir.

Q. In what capacity were you first employed?

A. Well, I was hired for a truck driver, as a truck driver.

Q. How long did you work as a truck driver?

A. Approximately a year.

Q. Then what position did you take?

A. I was a cementer.

Q. How long did you continue as a cementer?

[216]

A. A little over two years.

Q. While you were a truck driver did you take any training or education to be a cementer?

(Testimony of Harris Lee Alexander.)

A. Yes, sir.

Q. You did?

A. It was all training and education, to be a cementer.

Q. That is, while you were a truck driver you were the helper and assistant of another cementer?

A. That is right.

Q. You learned during that year to become a cementer? A. That is right.

Q. Now, you were a cementer for how long?

A. A little over two years. I don't remember the exact time, but it was around two years.

Q. Was part of that time in California?

A. Yes, sir, most of that time. In fact, I believe all that time was in California.

Q. As a truck driver was it somewhere else?

A. I started to work in Louisiana. I was hired in Oklahoma and they transferred me to Louisiana. I worked in Louisiana for a while, and in 1940 I was transferred to California. I drove a truck out here for approximately, oh, four or five or six months. I don't remember exactly. Anyhow, I was set up as a cementer.

Q. How did you learn to become a tester? [217]

A. Well, my schooling from the other testers, and just going out with the other testers, and approximately six weeks or two months of schooling. I was fairly well acquainted with the process before they transferred me to the testing department. I had talked to testers and been around the work

(Testimony of Harris Lee Alexander.)

in the oil fields and I had a fairly good understanding of what was to be expected of a tester.

Q. Out of what plant or camp, as you call them, do you work? A. Norwalk.

Q. What types of testing do you do?

A. Well, there is formation testing and then casing testing.

Q. What is formation testing?

A. Well, formation testing is the testing of a particular area or zone in the open hole, before the casing has been set. It is generally performed by reducing a hole and setting a packer on a shoulder to make a seal. In other words, to separate that particular area in the well. And then you open your tool and it retrieves the test or whatever would come in in that particular area. And when you close your tool you bring that, retrieve that out in your drill pipe. There are several different types of open hole or formation testing. It depends on the packer and the particular job. Each job is more or less different or individual.

Q. What is casing testing? [218]

A. Well, casing testing is performed within the casing. It is after the casing has been set in a well. They will pick out a particular zone or area they would like to test, and set a casing packer at a desired depth and perform the test within the casing. You can also have a casing test that would extend below the casing. In other words, you would be testing a formation below the casing, but you would still have your packer set in the casing, you see, to

(Testimony of Harris Lee Alexander.)

test an interval below your casing. It would be more or less a casing, but would be testing an open formation below.

Q. How far away from Norwalk are the wells that you do testing on?

A. Well, they vary from, oh, a mile to—well, it is just hard to say. The State of California, if it is required of us we sometimes go to Avanel, Imperial Valley. There is no set rule. We will go to the well, wherever the well might be. I would say the average job out of Norwalk will require about, oh, approximately 35 to 40 miles on an average to each well you have to drive. We take care of Castaic and Montalvo. Driving a little farther that way it runs up your average.

Q. Suppose you had a casing testing job that you were assigned to and they tell you when, in advance, the hour they want the testing to be done,—— A. Yes, sir.

Q. ——how much prior notice do you get? [219]

A. Well, as a general rule they will—well, it varies, but sometimes they will call in the night before and sometimes they will just call in a couple of hours before. In other words, you barely have time to make it. They generally give you a pretty good notice, three or four hours' notice; plenty of time to load up your tools and get to the location. Sometimes we have a little warning of it and we try to keep fairly familiar with the field so we won't get caught short-handed, so to speak.

(Testimony of Harris Lee Alexander.)

Q. All right. You leave then Norwalk, your place of business there, in sufficient time in advance of the specified hour to arrive at the location in due time? A. That is right.

Q. You have arrived there. Is the well owner always ready for you to start right in?

A. No, sir.

Q. Tell us what is the situation.

A. Well, I think you will find as a general rule they will be, well, in a reasonable length of time, two or three hours of being ready for you. It seems they would rather have the service company there waiting for them, than them waiting for the service company. They call for us early, as a general rule. You go out to make a test and they will be coming out of the hole and there will be a delay or wait there for you.

Q. Are some of these casing testing jobs made after [220] holes have been shot in the casing?

A. Yes, sir.

Q. Well, the shooting operation is performed by some other service company, other than Halliburton?

A. That is right. We don't have a gun in California.

Q. In any event, if it was that type of job you would have to wait until the other company had completed its shooting job; wouldn't you?

A. That is right.

Q. All right. What do you do during that period?

(Testimony of Harris Lee Alexander.)

A. Well, you would or could go to sleep in your pick-up or car, or you could, as a general rule, just sit around and talk with the men, because when the shooting is taking place the drilling crew or roughnecks are more or less free. Their time is more or less their own, too, because the company does the shooting and furnishes the crew to operate their equipment. You generally know some of the fellows and you sit around and talk to them.

Q. You just have to wait?

A. That is right; just wait.

Q. They are ready for you. Now tell us what you do.

A. Well, you assemble a string of tools.

Q. Just tell us what you mean by assembling a string of tools.

A. Well, a string of tools consists of a J tool or a Halliburton testing tool, and then an equalizing valve that [221] goes between your J tool and your packer. Your packer is a device to make a seal in a well, whether it is casing or formation. For instance, take a casing packer. You have your J. tool and your equalizing valve and your packer. Then you put your perforated piece of perforated iron and your pressure recorder, which records the pressure in the hole. They have a clock assembly and a chart that consists of a string of tools. That is attached to the end of the drill pipe.

Q. Stop there. What is this pressure recorder and something else you mentioned, chart?

(Testimony of Harris Lee Alexander.)

A. Well, the chart and the pressure recorder—it is fastened to a clock arrangement in a cylinder. It fits in the pressure recorder, you see. And the pressure recorder itself is open to the formation or the mud in the hole. As it is lowered in the hole the clock naturally makes the revolutions. It is set on a four-hour chart. It has a pencil that works. In other words, as the pressure increases the pencil moves down the chart.

You see, in other words, as you lower a testing tool in the hole your hydrostatic pressure increases; you would get a greater pressure or reading on your chart.

Then when you get to the desired depth in the hole you set your packer, which is a seal between the upper—in other words, it separates, as this packer sets out against the wall of the casing it separates the top from the bottom, [222] and then when you open up your tool which releases it to atmospheric pressure, because your drill pipe is dry, your chart will release back to zero, you see, and then if there is anything comes in during the test it will have a tendency to build up on the chart.

Q. All right. Your string of tools, as assembled, is on the end of the—— A. Drill pipe.

Q. ——drill pipe. Who puts the Halliburton tools on the drill pipe?

A. Well, the contractor has a crew of men there.

Q. You mean by that the driller?

A. The driller and roughnecks. In other words,

(Testimony of Harris Lee Alexander.)

the driller runs the draw works, or the machinery. Four roughnecks and the tester assemble the tool.

Q. All I want now is that it is the drilling crew that fastens these tools on.

A. Well, yes, with your help and supervision.

Q. You help, too? A. Yes.

Q. Then they run this tool down into the hole?

A. That is right.

Q. On the end of this drill pipe? A. Yes.

Q. What do you do while that is going on?

A. Well, you instruct the driller as to how to run it. [223] You can't run it as a bit. You can't go in as fast as you would ordinarily. You take it a little slower. Then your time is more or less your own; you can go eat.

Q. How long does it take to run it down?

A. It depends on the depth of the well.

Q. Say, 7,000 feet.

A. 7,000 feet? Two hours and a half.

Q. While it is down in the hole, how long do they leave it down there?

A. That again depends on the operator.

Q. That is, the well owner?

A. That is right.

Q. Give us the range he might leave it down in the hole.

A. Well, from 30 minutes to 30 days.

Q. 30 days is a long time.

A. Well, I know. They don't generally leave them that long. I have known of them being in a hole for 30 days.

(Testimony of Harris Lee Alexander.)

Q. What is the medium, let's say?

A. Well, as a general rule most of your tests are straight water shut-off tests that require just an hour on the bottom. On a production test they might desire to leave the tool open 24 hours, which would give it a 24-hour period to test the well and get their production tests, you see.

Q. Let's assume then this particular owner or operator decides to leave it in there 24 hours. [224]

A. Yes, sir.

Q. What is there for you to do during that 24-hour period?

A. Well, that again depends upon the operator. A few operators will require you to be right on the premises in case something happens. As a general rule you are more or less free to go get a place to sleep or go eat. Your time is more or less your own, in one sense of the word. You can't leave the immediate vicinity. For instance, if you were in Castaic and—although I have come home from Castaic when I knew the tool was going to be open for 24 hours. But as a general rule you just go some place, and if you know it is going to be open 24 hours you get a cabin, motel, you know, and go to bed. You let them know where they can reach you in case something happens to the tool, because there is always the possibility something might happen.

Q. You say there are some of the operators that require you to stay on the well location. Do

(Testimony of Harris Lee Alexander.)

you mean by that you have to be where they can call you?

A. Well, no, some of them will go farther than to be where they can call you; they want you to be where they can reach you.

Q. That is what I mean. Would they object if you laid down in the cab of your car and went to sleep?

A. No, if they could wake you up.

Q. They have what they call a dog house? [225]

A. Yes.

Q. A place you can lie down? I don't say how comfortable it is. A. That is right.

Q. Do you do that? A. Yes, sir.

Q. In that situation the hours you would be waiting on location, where the man wants you around there somewhere, would you put that down as time worked? A. Yes, sir.

Q. As running the job?

A. Running the job.

Q. Now, if you were there 12 or 24 hours, under those circumstances would that man let you leave the premises to eat? A. Yes, sir.

Q. What do you do, drive to some nearby town and eat? A. That is right.

Q. If it is one of the more liberal well owners that permits you to, say, go uptown and play pool, for instance, do you mark that down as time worked? A. Yes, sir.

Q. You are still running the job?

A. Yes. As long as that tool is in the hole.

(Testimony of Harris Lee Alexander.)

Q. As long as that tool is in the hole you are running the job? [226] A. Yes.

Q. And all the time the tool is in the hole that is time worked?

A. Yes. Unless on a job, I suppose, of 30 days, where the operator would tell you he don't know how long he will have that tool in the hole. He releases you, so to speak, and tells you he will call you when he is ready to pull it out, and will give you plenty of notice to get back. In a case of that kind you stop your time when you get back to the shop.

Q. If you are on a job and permitted to go to town, so long as he knows where he can reach you, you mark that down as time worked?

A. All except my meal time.

Q. Except meal time?

A. That is right.

Q. If you had a room and went to sleep, say, for seven hours, would you put that down as time worked?

A. Well, for seven hours,——

Q. Tell me when you do and when you don't.

A. It all depends upon the particular job and the time. If I go and get a room and go to bed and get a night's sleep, that is not time worked.

Q. That is not time worked?

A. That is not time worked, no, sir. But if I just go in and sleep for a couple of hours, in other words, say, [227] three hours that I go in and get some sleep, I don't put that down. I put

(Testimony of Harris Lee Alexander.)

that down as straight time right on through that the tool is open.

Q. Running the job?

A. That is right.

Q. Well, who keeps your time? A. I do.

Q. Does anybody go with you, any foreman, that checks up on how you keep your time when you are away from the plant? A. No, sir.

Q. All right. The job is over and you load up your tools and start back? A. Yes, sir.

Q. When you arrive at Norwalk, what do you do?

A. Well, as a general rule we just unload our tools and go home.

Q. Who cleans them?

A. They have a man that cleans our tools, as a general rule. In other words, he works eight hours a day. In case you were to miss a test with a formation packer or a casing packer, and it required you to overhaul or clean the packer, why, you would have to overhaul that yourself at night, rather than call him out. He would be glad to come out. As a general rule we just overhaul them ourselves and go back or send someone else out. [228]

Q. Then you go home?

A. That is right. Well, if you come in in the morning you are apt to hang around the shop for an hour or two or three, you know. If you come in a night or in the afternoon late—it would depend on how long you had been out, as to whether you want to go home or not.

(Testimony of Harris Lee Alexander.)

Q. If you are out up to midnight one night, when do you next report to the shop?

A. When I feel like it. I mean if it is around 10:00, 11:00 or 12:00 o'clock, when I get my sleep out, if they don't call me I go to bed at night. If I get in at 12:00 o'clock and I am home by 12:30 or 1:00 I sleep until I have had my sleep out, and get up and go out to the shop, if I want to go out to the shop. If I don't I call up and ask them what is going on. If there isn't anything going on I might not even go out.

Q. If you are out on the well and it is one of these testings in the casing, it might be they would shoot holes and then have you test and then pull out your tool out of the hole, and they would shoot some more holes; would they not?

A. That is right.

Q. You would have to wait then while that operation was going on before you could make your second test? A. That is right.

Q. Do you charge that as time worked? [229]

A. Yes, sir. Well, you could charge it waiting time or time worked, either one.

Q. When you are out on a job like that how much actual manual work, as compared to the supervising of the drilling crew, do you do, if you can make any estimate?

A. That is a hard thing to say.

Q. Well, you don't want to guess at it, I guess.

A. Well, you are supervising the work while the tool is going in the hole.

(Testimony of Harris Lee Alexander.)

Q. Yes.

A. And you are actually not doing anything. You instruct the driller and you use your own judgment as to whether he will follow your instructions or not before you leave, if you do leave. If you think somebody won't do it as you said, you stay there and watch him. And that time you are just sitting around or out in your car reading or listening to the radio, or whatever you might be doing. So it is really hard to say how much of the time you are in an advisory capacity.

Q. All right.

A. Of course, you have charge of the job. You know what I mean.

Q. That is, it is up to you to see the job is done right?

A. That is right. To see the tools are made up and they are run in the hole right and that they are performing [230] right and that you also get them back. That is another pretty good item, to get them back.

Q. What do you mean by that?

A. Well, while we have a pretty good record, any time you run anything in an oil well you are taking a chance on leaving it there.

Q. You might lose the well as well as losing the tool?

A. Yes, sir; it would be pretty bad.

Q. All right. What time do you usually report at the plant in the morning?

A. From 8:00 to 10:00 o'clock.

(Testimony of Harris Lee Alexander.)

Q. All right. Suppose you showed up in the morning somewhere between those two hours and there was no job up for you to do, and assuming that your equipment is in shape, what would you do?

A. Well, I would do pretty much as I pleased. I mean if I, for some reason, wanted to stay around there, I would. If, for some reason, I wanted to go to town and there wasn't anything going on, I would go to town. If I wanted to go home I would go home. If I was reasonably sure they wouldn't need me I would more or less do what I wanted to do.

Q. Do you have to keep your equipment in shape at the shop?

A. Well, yes and no. We don't do too much work on the tools. In other words, we have this man who cleans our tools and has them in shape. We will help him occasionally on [231] little matters, but as far as going out there and spending a day cleaning our tools, we very seldom do anything like that. That is, this particular shop in Norwalk, you see, I speak of. I am just talking about this shop down here. [232]

Q. Is it much different than somewhere else?

A. Well, yes, because the men in other places have to clean their own tools. In other words, there is no man to clean the tools at the other three camps.

Q. The Norwalk Camp is a larger plant than the others?

(Testimony of Harris Lee Alexander.)

A. Yes. You might call it a base of operations or the home plant.

Q. So, being a bigger plant, you can have one man serv' the tools, with some help from the operators? A. Yes, sir.

Q. If you are helping this mechanic work on the tools you charge that as time worked, of course? A. That is right.

Q. You charge it to maintenance?

A. Well, my particular time, I just put down two things. Sometimes, I think, there has been waiting on jobs. Well, driving, I put down my driving and the running of the job. And the other work, which is the bottom column, that is what I use instead of maintenance.

Q. You put down just other work.

A. Everything is other work.

Q. If you weren't working on the tools, but you stayed at the plant and just stood around or sat around there for all day, what would you put down? Would you put down any time worked?

A. Yes, sir. [233]

Q. All day?

A. Yes, because I wouldn't be there all day; approximately six to eight hours. Of course, eight hours is all day. But most of the time it is not quite that much.

Q. If you went home, would you put down if you stayed home all day? Would you put that down as a zero? A. Yes, sir.

(Testimony of Harris Lee Alexander.)

Q. You would still be on call, subject to call, but not actually working?

A. Yes, sir, and the days that you put down a zero.

Q. When you put down a "D. O." that means your day off, when you are not subject to call; is that correct? A. That is right.

Q. Do you follow that practice?

A. Yes, sir.

Q. Have you had any instructions from Mr. Lacy, the superintendent, as to whether if there is nothing up, no job waiting for you to do and none booked in the immediate future, as to whether you should stay at the plant or be permitted to go home or play golf, or anything?

A. Yes, sir.

Q. Do you follow those instructions?

A. Yes, sir.

Q. Do you also operate the so-called Yowell cementing tool? A. Yes, sir. [234]

Q. That is a special tool for cementing leaks or holes in the casing; is it not?

A. Yes, a straddle tool.

Q. Beg pardon. A. A straddle tool.

Q. In connection with that operation is there any waiting time? A. Yes, sir.

Q. How much?

A. Well, that again depends upon the job. But there will be cases or times when they will do a cement job and then they will wait to test their cement job with pressure. Well, they have to let

(Testimony of Harris Lee Alexander.)

the cement set up. In other words, take an initial set.

Now, operators have different ideas as to how long it takes for cement to take an initial set. Some of them don't like to put a pressure on their job for several hours, and some of them are a little faster. Around eight to 12 hours is the general rule they will want the tool to stay in the hole, and then go back down over your holes and apply pressure. If it holds pressure it is reasonable to believe the job is all right. If it pumps away you know you will have to put another batch of cement, have the job to do over.

Q. During the period of six or eight hours, whatever it is, you have to stay around the location there?

A. Well, in the immediate vicinity, you know. You can [235] go eat or you could go to sleep, or if the shop was close enough you could go to the shop. But as a general rule, why, you won't have time to go to the shop.

Q. Do you put that period down, those six or eight hours, as working time?

A. Yes, sir, that is running the job.

Q. Have you been ill? I mean confied to your home with illness since July of 1942?

A. Yes, sir; I think so.

Q. Do you know how long you were off?

A. About three days, I believe.

Q. Were you docked for those days off?

A. No. sir.

(Testimony of Harris Lee Alexander.)

Q. Do you ever receive overtime pay in excess of that paid for by your weekly guarantee?

A. Yes, sir.

Mr. Sandmeyer: I request the clerk to mark this document as Defendant's next exhibit.

The Clerk: Defendant's Exhibit P for identification.

(The document referred to was marked as Defendant's Exhibit P, for identification.)

Q. By Mr. Sandmeyer: Mr. Alexander, I show you Defendant's Exhibit P for identification, consisting of three sheets. I will show you the middle sheet first, which is a document dated June 25, 1942. At the top it says, "Mr. Harris L. Alexander, Dear Sir:" and at the bottom, "Yours ([236] very truly, Halliburton Oil Well Cementing Company, by Erle P. Halliburton," and under that it is dated "This 10th day of July, 1942." And there appears a signature, "Harris L. Alexander." Is that your signature? A. Yes.

Q. Did you sign it on or about July 10, 1942?

A. Yes, sir.

Q. After signing it, what did you do with it?

A. I turned it into the company at Montalvo. I believe at that particular time I gave it to Mr. Wheeler.

Q. The first page is what purports to be an agreement dated November 1, 1942, between the Halliburton Oil Well Cementing Company and Harris L. Alexander, and purportedly signed by H. L. Alexander. Is that your signature?

(Testimony of Harris Lee Alexander.)

A. That is my signature.

Q. Did you sign that on or about November 1, 1942? A. Yes, sir.

Q. Then what did you do with it?

A. I turned it in to Mr. Wheeler, I imagine.

Q. Some representative of the company?

A. Yes, Mr. Wheeler is the foreman at Ventura or Montalvo.

Q. In the middle sheet, which is dated June 25, 1942, the document provides, "We advise that from and after July 1, 1942, your basic rate of pay will be 46 cents per hour for the first 40 hours each week and not for time over 40 [237] hours each week, you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $49.62."

Now, on the first page, the document dated November 1, 1942, I notice that the regular basic rate is 48 cents per hour instead of 46 cents. Does that mean a raise for you?

A. Yes, that was evidently a raise.

Q. Your guarantee was raised from $49.62 to $51.92. A. Yes, sir.

Q. On the third page, which is a document which I would like to read, it states as follows:

(Testimony of Harris Lee Alexander.)

"September 28, 1943.

"Mr. Harris L. Alexander

"Norwalk, California.

"Dear Sir:

"Since the date of your employment contract signed November 1, 1942, the provisions relating to compensation have been changed as follows:

"The regular basic rate per hour has been increased from 48 cents to 57 cents. The sum guaranteed for each work week has been increased from $51.92 to $61.15.

"The guaranteed weekly minimum of $61.15 is [238] equal to a monthly salary of $265.00.

"Your truly,

"Hugh H. Leonard.

"Assistant Secretary-Treasurer."

Did you receive the original of that notice?

A. Yes, sir, I am pretty sure I did. I know I did.

Q. Now, as of September 28, 1943, your hourly rate was 57 cents. Is that what it is now?

A. No, sir.

Q. What is it? A. 59, I believe.

Q. What is your weekly guarantee now, if you recall?

A. Sixty three dollars and some odd cents. I don't know what the odd cents are. $63.00 I am pretty sure of.

Mr. Sandmeyer: We offer this document, Defendant's Exhibit P for identification, in evidence.

(Testimony of Harris Lee Alexander.)

The Court: I will be received.

The Clerk: Defendant's Exhibit P in evidence.

(The document referred to was marked as Defendant's Exhibit P, and was received in evidence.)

DEFENDANT'S EXHIBIT P

EMPLOYMENT CONTRACT

This Agreement, made and entered into this 1st day of November, 1942, between Halliburton Oil Well Cementing Company, a corporation, of Duncan, Oklahoma, hereinafter referred to as "Employer" and Harris L. Alexander, of Montalvo, California, hereinafter referred to as "Employee".

Witnesseth

Whereas, Employer is engaged in the manufacture and sale of oil well equipment and other manufactured products and in the furnishing of special oil well services such as cementing, acidizing, electrical logging, sand testing and the servicing of various oil well specialty tools and devices, and

Whereas, Employee desires to enter the employ of the Employer, or is at this time so employed, and it is the desire of both Employer and Employee to negotiate or re-negotiate a contract of future employment.

Now, Therefore, the Employer and Employee mutually covenant and agree as follows:

Employer agrees to employ Employee as a cementer and to pay Employee for his services a

(Testimony of Harris Lee Alexander.)

regular basic rate of 48 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $51.92 for each workweek.

Employee agrees to enter the employ and service of Employer and agrees to perform any work which may be assigned to him by the Employer in connection with any of the activities in which Employer is engaged and that he will perform such work in a careful, prudent and workmanlike manner to the best of his knowledge, skill and ability and Employee agrees to accept as full compensation for such work the wages herein set forth.

Employee consents and agrees that during the term of his employment under this contract he will, in connection with the performance of his work, submit himself to the direction, supervision and control, as a special employee, of those with whom Employer may contract to furnish special services and equipment in connection with Employer's activities.

Employee agrees that Employer may make such deductions from Employee's wages as Employee may from time to time authorize and such other deductions as may be required of Employer by law.

It is mutually agreed that in the event Employer should desire to increase Employee's wages Employer shall notify Employee of the increaserd basic

(Testimony of Harris Lee Alexander.)

hourly rate of pay and the increased guaranteed weekly minimum salary which shall be increased in proportion to the basic hourly rate increase and such increased basic hourly rate and guaranteed minimum weekly salary shall be substituted for the basic hourly rate and guaranteed minimum weekly salary herein provided and the terms and conditions of this contract shall in all other respects remain in full force and effect.

This contract may be terminated at any time at the option of either the Employer or the Employee upon notice to the other party of intention to exercise such option.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

HALLIBURTON OIL WELL CEMENTING COMPANY
By ERLE P. HALLIBURTON
President
H. L. ALEXANDER
Employee

June 25, 1942.

Mr. Harris L. Alexander

Dear Sir:

A few days ago the Supreme Court of the United States rendered a decision placing an interpretation on the Fair Labor Standards Act sustaining our interpretation and arrangement as set forth in a letter to our field employees dated December 21,

(Testimony of Harris Lee Alexander.)

1938. The Supreme Court says: "Employment contracts providing for basic hourly rate of pay higher than wage required by Act, for overtime compensation at not less than one and one-half times such basic rate, and guaranteeing to employee the wage he received before Act are not invalid."

About the first of this year, the Wage and Hour Division of the Department of Labor advised us that under its interpretation the above plan which we had adopted would not meet the requirements of the Act. In order that we might avoid litigation, we agreed to comply with the Act as interpreted by the Wage and Hour Division of the Department of Labor, and on March 1, 1942, we put into effect the irregular work week plan demanded by the Wage and Hour Division of the Department of Labor.

The arrangement which we put into effect in December, 1938, and which remained in effect until March 1 of this year has proven by experience to be by far the most satisfactory arrangement, for both our Company and the employees. The peculiar nature of our business makes it very unsatisfactory to our employees and to our Company, if we should be forced to pay our employees on a strictly hourly basis. Also, the irregular work week plan is very confusing and tends to create dissension and cause and unhealthy condition between the employer and the employees. Your Company has, therefore, concluded that the arrange-

(Testimony of Harris Lee Alexander.)

ment which we maintained in effect from December, 1938, until March 1 of this year, is by far the most satisfactory arrangement for our field employees. We, therefore, are returning to our original agreement of employment beginning July 1, 1942.

In order that there may be a definite understanding as to your contract of employment, we advise that from and after July 1, 1942, your basic rate of pay will be 46c per hour for the first 40 hours each week and that for time over 40 hours each week, you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $49.62.

Yours very truly,

HALLIBURTON OIL WELL CEMENTING COMPANY

By ERLE P. HALLIBURTON

President.

EPH:ek

I hereby acknowledge the arrangement as above set forth to be my understanding of the terms and conditions of my employment and I agree to same.

HARRIS L. ALEXANDER

Dated this 10 day of July, 1942.

(Testimony of Harris Lee Alexander.)

September 28, 1943

Mr. Harris L. Alexander
Norwalk, California

Dear Sir:

Since the date of your Employment Contract, signed November 1, 1942 the provisions relating to compensation have been changed as follows:

The regular basic rate per hour has been increased from 48 cents to 57 cents. The sum guaranteed for each workweek has been increased from $51.92 to $61.15.

The guaranteed weekly minimum of $61.15 is equivalent to a monthly salary of $265.

Yours truly,

HUGH H. LEONARD
Ass't. Secretary-Treas.

HHL:ks

[Endorsed]: Filed 5/18/44.

The Court: What is the monthly salary now?

The Witness: $275.00 on a monthly basis. Sixty three dollars and some odd cents a week.

Q. By Mr. Sandmeyer: A record of your hours worked each week is kept out at the Norwalk plant; it is not? A. That is right. [237]

Q. If you desire, may you go to the girl that keeps these record and find out how many hours you worked in the week? A. Yes, sir.

Q. I show you Plaintiff's Exhibit 1-C being the payroll chart. Is that posted on the bulletin board out there?

(Testimony of Harris Lee Alexander.)

A. Yes, it is on the bulletin board. I had reference to another bulletin board. I remember this other one, too.

Q. If you would ask the girl to compute the amount of overtime you had coming, would she do that for you? A. Yes, sir.

Mr. Sandmeyer: You may cross examine.

Miss Williams: I have no questions.

The Court: That is all.

(Witness excused.)

Mr. Sandmeyer: Mr. Frank Weaver.

FRANK L. WEAVER,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined, and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Frank L. Weaver.

By Mr. Sandmeyer:

Q. Where do you reside, Mr. Weaver?

A. Whittier, California. [240]

Q. Are you employed by the Halliburton Oil Well Cementing Company? A. Yes, sir.

Q. In what capacity? A. Cementer.

Q. How long have you been with the company?

A. Ever since they took over in California, since they bought out the—I was with Mr. Bell until

(Testimony of Frank L. Weaver.)

they bought Mr. Bell out, and I went over with Halliburton.

Q. You were with the company that the Halliburton Company bought out? A. Yes.

Q. How long have you been in the oil well servicing business? A. Since '25.

Q. 1925? A. Yes.

Q. How old are you, Mr. Weaver?

A. 60 years old.

Q. You are still able to do a cementing job?

A. I have been; no complaints have been made yet.

Q. You do cementing with casing in a well; is that correct? A. Yes, sir.

Q. When you go out on a job you drive out there in a car, as I understand it. [241]

A. Yes, we have a car.

Q. Your helper or assistant drives the cementing truck; is that right? A. That is right.

Q. If the Halliburton Company furnishes the cement there will be another driver of the bulk cement truck? A. That is right.

Q. Now, when you go out on the job are they always ready for you to start your cementing job when you arrive?

A. No, they are not; very seldom they are ready.

Q. How much waiting do you have to do when you get there?

A. Well, we wait sometimes many hours, as many as 10 or 12 hours.

(Testimony of Frank L. Weaver.)

Q. Is that due to the fact they have to run the casing in the hole after you get there?

A. They have to run the casing in the hole. As a rule we don't wait that long. There have been lots of times we have waited that long.

Q. What do you do during that period?

A. Well, when we go out we fix up the connection that goes in the pipe so if they should have any trouble and they want to circulate they could have the head. Then we go back sometimes to the plant or the boys go out and eat or we lie down and take a snooze in the car; just waiting around.

Q. Usually they require you to be available near the [242] location; do they not?

A. Yes, they want you to stay close around.

Q. While you are waiting there on location, doing the things you have described, do you put that down as time worked?

A. Yes, because we are out there.

Q. You charge that to waiting on location?

A. Yes.

Q. How long does it take to do the cementing job itself? I might give you the depth of a well. Assume the well is 8000 feet.

A. Ordinarily it would take, you might say, two hours. If they pump it down with their pumps it is quicker, but if they pump out the fluid and us pump it in, it will take a little longer. Our pumps don't throw as much fluid as theirs. It will run from two to two and a half hours.

(Testimony of Frank L. Weaver.)

Q. When you have finished the cementing job you have to bring your equipment back to Norwalk?

A. Yes.

Q. Do you maintain your own equipment?

A. Well, if it is just like putting in valves and pistons we do. If there is any other work they have mechanics that do that. If it requires something we can't do there in the shop, why, they fix it; something that is broken.

Q. While you are out there on the job, waiting for them to run a casing or for any other reason, what would the [243] driver be doing?

A. Well, just the same thing as we; we stay together.

Q. If you furnish the cement, also you would have that driver there, too?

A. Well, we all lounge around together. If we leave we all go in the cementer's car. We have the one car out there.

Q. If you go somewhere to eat? A. Yes.

Q. That is what I want to know. The cementer, you and your cementing equipment driver and the bulk cement driver all have to wait on location there until they are ready for you to start the cementing job?

A. Yes, we all have to wait.

Q. Are you required to stay at the plant days in which there is no job for you to do, or no work to be done on your equipment? A. No.

Q. As a matter of fact, you usually do, though; don't you?

(Testimony of Frank L. Weaver.)

A. Oh, I stay around. If I am looking for something to come in I would hang around awhile. If we thought there wasn't nothing coming in, we would go home.

Q. While you are there at the plant you put those hours down as time worked?

A. Yes, sir. [244]

Q. To what do you charge it?

A. Well, I generally charge it to maintenance work.

Q. Have you received instructions from the superintendent, Mr. Lacy, that if there is no job up or expected and your equipment is in shape that you are free to go where you desire, just so long as you leave the foreman your telephone number where you may be reached?

A. Yes, we had that the first thing when we taken over the business.

Q. Have you ever been confined at your home for illness since *you* July, 1942?

A. Yes, I have.

Q. For periods of what length?

A. Six weeks.

Q. Did you receive your pay for any part of that period?

A. I received it all that period.

Q. The entire six weeks?

A. Beg pardon?

Q. For the entire six weeks? A. Yes.

Q. You weren't docked at all for that illness?

A. No.

(Testimony of Frank L. Weaver.)

Q. As a matter of fact, you are not doing cementing right now; are you?

A. No, I am in court. [245]

Q. You have me there, Mr. Weaver.

A. No.

Q. I mean assuming we release you today and tomorrow you are out at the plant, are you available for cementing jobs?

A. I am if I am needed. I am just kind of scouting around.

Mr. Sandmeyer: I request the clerk to mark this for identification.

The Clerk: Defendant's Exhibit Q for identification.

(The document referred to was marked as Defendant's Exhibit Q, for identification.)

Q. By Mr. Sandmeyer: Mr. Weaver, I show you a document marked Q for identification, consisting of two sheets. I show you the bottom one first, which is the form of a letter dated June 25, 1942, addressed to Mr. Frank L. Weaver, and purportedly signed by you July 3, 1942. Is that your signature (indicating)? A. It is.

Q. After you signed it, what did you do with it?

A. I turned it in to the Norwalk office.

Q. The top sheet is a form of contract dated May 1, 1943, of the Halliburton Oil Well Cementing Company, and purportedly signed by you as employee. Is that your signature (indicating)?

(Testimony of Frank L. Weaver.)

A. Yes, sir. [246]

Q. You signed it on or about that date?

A. Yes.

Q. Did you turn that into the company?

A. I did.

Q. The top sheet shows you are employed as a cementer at a regular basic rate of 59 cents, with a weekly guarantee of $63.46. Is that your present rate of compensation? A. Yes, sir.

Mr. Sandmeyer: We offer this in evidence.

The Court: It may be received.

The Clerk: Defendant's Exhibit Q in evidence.

(The document referred to was marked as Defendant's Exhibit Q, and was received in evidence.)

DEFENDANT'S EXHIBIT Q

250.00—275.00

EMPLOYMENT CONTRACT

[In Pencil]: 56303—2765.

This Agreement, made and entered into this 1st day of May, 1943, between Halliburton Oil Well Cementing Company, a corporation, of Duncan, Oklahoma, hereinafter referred to as "Employer" and Frank A. Weaver, of Norwalk, Calif., hereinafter referred to as "Employee".

Witnesseth

Whereas, Employer is engaged in the manufacture and sale of oil well equipment and other manufactured products and in the furnishing of special

(Testimony of Frank L. Weaver.)

oil well services such as cementing, acidizing, electrical logging, sand testing and the servicing of various oil well specialty tools and devices, and

Whereas, Employee desires to enter the employ of the Employer, or is at this time so employed, and it is the desire of both Employer and Employee to negotiate or re-negotiate a contract of future employment.

Now, Therefore, the Employer and Employee mutually covenant and agree as follows:

Employer agrees to employ Employee as a cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $63.46 for each workweek.

Employee agrees to enter the employ and service of Employer and agrees to perform any work which may be assigned to him by the Employer in connection with any of the activities in which Employer is engaged and that he will perform such work in a careful, prudent and workmanlike manner to the best of his knowledge, skill and ability and employee agrees to accept as full compensation for such work the wages herein set forth.

Employee consents and agrees that during the term of his employment under this contract he will,

(Testimony of Frank L. Weaver.)

in connection with the performance of his work, submit himself to the direction, supervision and control, as a special employee, of those with whom Employer may contract to furnish special services and equipment in connection with Employer's activities.

Employee agrees that Employer may make such deductions from Employee's wages as Employee may from time to time authorize and such other deductions as may be required of Employer by law.

It is mutually agreed that in the event Employer should desire to increase Employee's wages Employer shall notify Employee of the increased basic hourly rate of pay and the increased guaranteed weekly minimum salary which shall be increased in proportion to the basic hourly rate increase and such increased basic hourly rate and guaranteed minimum weekly salary shall be substituted for the basic hourly rate and guaranteed minimum weekly salary herein provided and the terms and conditions of this contract shall in all other respects remain in full force and effect.

This contract may be terminated at any time at the option of either the Employer or the Employee upon notice to the other party of intention to exercise such option.

(Testimony of Frank L. Weaver.)

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

HALLIBURTON OIL WELL
CEMENTING COMPANY
By ERLE P. HALLIBURTON
President
FRANK L. WEAVER
Employee

June 25, 1942

Mr. Frank L. Weaver

Dear Sir:

A few days ago the Supreme Court of the United States rendered a decision placing an interpretation on the Fair Labor Standards Act sustaining our interpretation and arrangement as set forth in a letter to our field employees dated December 21, 1938. The Supreme Court says: "Employment contracts providing for basic hourly rate of pay higher than wage required by Act, for overtime compensation at not less than one and one-half times such basic rate, and guaranteeing to employee the wage he received before Act are not invalid."

About the first of this year, the Wage and Hour Division of the Department of Labor advised us that under its interpretation the above plan which we had adopted would not meet the requirements of the Act. In order that we might avoid litigation, we agreed to comply with the Act as interpreted by the Wage and Hour Division of the Department of Labor, and on March 1, 1942, we put into effect the

(Testmony of Frank L. Weaver.)

irregular work week plan demanded by the Wage and Hour Division of the Department of Labor.

The arrangement which we put into effect in December, 1938, and which remained in effect until March 1 of this year has proven by experience to be by far the most satisfactory arrangement, for both our Company and the employees. The peculiar nature of our business makes it very unsatisfateory to our employees and to our Company, if we should be forced to pay our employees on a strictly hourly basis. Also, the irregular work week plan is very confusing and tends to create dissension and cause an unhealthy condition between the employer and the employees. Your Company has, therefore, concluded that the arrangement which we maintained in effect from December, 1938, until March 1 of this year, is by far the most satisfactory arrangement for our field employees. We, therefore, are returning to our original ageement of employment beginning July 1, 1942.

In order that there may be a definite understanding as to your contract of employment, we advise that from and after July 1, 1942, your basic rate of pay will be 54c per hour for the first 40 hours each week and that for time over 40 hours each week, you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the

(Testmony of Frank L. Weaver.)

necessities of the business may demand, a sum not less than $57.69.

Yours very truly,
By ERLE P. HALLIBURTON
CEMENTING COMPANY
By EARLE P. HALLIBURTON
President.

EPH:ek

I hereby acknowledge the arrangement as above set forth to be my understanding of the terms and conditions of my employment and I agree to same.

Dated this 3 day of July, 1942.

FRANK L. WEAVER.

[Endorsed]: Filed 5/18/44.

Mr. Sandmeyer: You may cross examine.

Miss Williams: I have no questions.

The Court: Thank you.

(Witness excused.)

Mr. Sandmeyer: I will call Mr. Cross.

CURTIS R. CROSS,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined, and testified as follows:

Direct Examination

The Clerk: State your full name.

The Witness: Curtis R. Cross.

(Testimony of Curtis R. Cross.)

The Clerk: Will you take the stand, please.

[247]

By Mr. Sandmeyer:

Q. Mr. Cross, where do you reside?

A. Long Beach, California.

Q. Are you employed by the Halliburton Oil Well Cementing Company? A. I am.

Q. In what capacity? A. A tester.

Q. Tester A. That is right.

Q. Out of which plant or camp do you operate?

A. Norwalk.

Q. Did you hear the testimony of Mr. Alexander with respect to his activities in connection with the company? A. I did.

Q. Are your activities similar to those of Mr. Alexander?

A. Yes, we work in the same department.

Q. And the waiting time and time spent at the shop and the type of work you do is similar to that as testified to by Mr. Alexander? A. Yes.

Mr. Sandmeyer: I request the clerk mark this document for identification.

The Clerk: Defendant's Exhibit R for identification.

(The document referred to was marked as Defendant's Exhibit R, for identifiration.)

[248]

Q. By Mr. Sandmeyer: Mr. Cross, I show you Defendant's Exhibit R for identification, consisting of three sheets. The middle sheet is purportedly a letter from Halliburton Oil Well Cementing Com-

(Testimony of Curtis R. Cross.)

pany dated June 25, 1942, addressed to Mr. Curtis R. Cross and purportedly signed by you. Is that your signature (indicating)? A. Yes, sir.

Q. Did you sign that on or about July 9, 1942; the date? A. That is right.

Q. And the first sheet is the employment contract, so designated, dated October 16, 1942, with Halliburton Oil Well Cementing Company, and purportedly signed by you. Is that your signature (indicating)? A. Yes.

Q. And you turned these into the company?

A. Yes.

Q. I notice in the employment contract, dated October 16, 1942, your basic hourly rate is 54 cents, and the weekly guarantee is $57.69.

A. That is right.

Q. The third sheet is a form of a letter dated September 28, 1943, addressed to Mr. Curtis R. Cross, and states, "Since the date of your employment contract, signed October 16, 1942, the provisions relating to compensation have been changed as follows: [249]

"The regular basic rate per hour has been increased from 54 cents to 59 cents. The sum guaranteed for each work week has been increased from $57.69 to $63.46."

"The guaranteed weekly minimum of $63.46 is equivalent to a monthly salary of $275.00.

"Yours truly,

"Hugh H. Leonard, Assistant Secretary-Treasurer."

(Testimony of Curtis R. Cross.)

Did you receive the original of that notice?

A. Yes.

Q. Is that your present basis of pay?

A. Yes.

Mr. Sandmeyer: We offer this in evidence.

The Court: It will be received.

The Clerk: Defendant's Exhibit R into evidence.

(The document referred to was marked as Defendant's Exhibit R, and was received in evidence.)

DEFENDANT'S EXHIBIT R

EMPLOYMENT CONTRACT

[In Pencil]: 441-05-0496

This Agreement, made and entered into this 16th day of October, 1942, between Halliburton Oil Well Cementing Company, a corporation, of Duncan, Oklahoma, hereinafter referred to as "Employer" and Curtis R. Cross, of Avenal, California, hereinafter referred to as "Employee".

Witnesseth

Whereas, Employer is engaged in the manufacture and sale of oil well equipment and other manufactured products and in the furnishing of special oil well services such as cementing, acidizing, electrical logging, sand testing and the servicing of various oil well specialty tools and devices, and

Whereas, Employee desires to enter the employ of the Employer, or is at this time so employed, and it is the desire of both Employer and Employee to

(Testimony of Curtis R. Cross.)

negotiate or re-negotiate a contract of future employment.

Now, Therefore, the Employer and Employee mutually covenant and agree as follows:

Employer agrees to employ Employee as a Tester and to pay Employee for his services a regular basic rate of 54 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $57.69 for each workweek.

Employee agrees to enter the employ and service of Employer and agrees to perform any work which may be assigned to him by the Employer in connection with any of the activities in which Employer is engaged and that he will perform such work in a careful, prudent and workmanlike manner to the best of his knowledge, skill and ability and Employee agrees to accept as full compensation for such work the wages herein set forth.

Employee consents and agrees that during the term of his employment under this contract he will, in connection with the performance of his work, submit himself to the direction, supervision and control, as a special employee, of those with whom Employer may contract to furnish special services and equipment in connection with Employer's activities.

(Testimony of Curtis R. Cross.)

Employee agrees that Employer may make such deductions from Employee's wages as Employee may from time to time authorize and such other deductions as may be required of Employer by law.

It is mutually agreed that in the event Employer should desire to increase Employee's wages Employer shall notify Employee of the increased basic hourly rate of pay and the increased guaranteed weekly minimum salary which shall be increased in proportion to the basic hourly rate increase and such increased basic hourly rate and guaranteed minimum weekly salary shall be substituted for the basic hourly rate and guaranteed minimum weekly salary herein provided and the terms and conditions of this contract shall in all other respects remain in full force and effect.

This contract may be terminated at any time at the option of either the Employer or the Employee upon notice to the other party of intention to exercise such option.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

HALLIBURTON OIL WELL
CEMENTING COMPANY
By ERLE P. HALLIBURTON
President
CURTIS R. CROSS
Employee

(Testimony of Curtis R. Cross.)

June 25, 1942

Mr. Curtis R. Cross

Dear Sir:

A few days ago the Supreme Court of the United States rendered a decision placing an interpretation on the Fair Labor Standards Act sustaining our interpretation and arrangement as set forth in a letter to our field employees dated December 21, 1938. The Supreme Court says: "Employment contracts providing for basic hourly rate of pay higher than wage required by Act, for overtime compensation at not less than one and one-half times such basic rate, and guaranteeing to employee the wage he received before Act are not invalid."

About the first of this year, the Wage and Hour Division of the Department of Labor advised us that under its interpretation the above plan which we had adopted would not meet the requirements of the Act. In order that we might avoid litigation, we agreed to comply with the Act as interpreted by the Wage and Hour Division of the Department of Labor, and on March 1, 1942, we put into effect the irregular work week plan demanded by the Wage and Hour Division of the Department of Labor.

The arrangement which we put into effect in December, 1938, and which remained in effect until March 1 of this year has proven by experience to be by far the most satisfactory arrangement, for both our Company and the employees. The peculiar nature of our business makes it very unsatisfactory to our employees and to our Company, if we should

(Testimony of Curtis R. Cross.)

be forced to pay our employees on a strictly hourly basis. Also the irregular work week plan is very confusing and tends to create dissension and cause an unhealthy condition between the employer and the employees. Your Company has, therefore, concluded that the arrangement which we maintained in effect from December, 1938, until March 1 of this year, is by far the most satisfactory arrangement for our field employees. We, therefore, are returning to our original agreement of employment beginning July 1, 1942.

In order that there may be a definite understanding as to your contract of employment, we advise that from and after July 1, 1942, your basic rate of pay will be 52c per hour for the first 40 hours each week and that for time over 40 hours each week, you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $55.38.

Yours very truly,

HALLIBURTON OIL WELL CEMENTING COMPANY

By ERLE P. HALLIBURTON

President.

EPH:ek

(Testimony of Curtis R. Cross.)

I hereby acknowledge the arrangement as above set forth to be my understanding of the terms and conditions of my employment and I agree to same.

Dated this 9 day of July, 1942.

CURTIS R. CROSS

September 28, 1943

Mr. Curtis R. Gross
Avenal, California

Dear Sir:

Since the date of your Employment Contract, signed October 16, 1942 the provisions relating to compensation have been changed as follows:

The regular basic rate per hour has been increased from 54 cents to 59 cents. The sum guaranteed for each workweek has been increased from $57.69 to 63.46.

The guaranteed weekly minimum of $63.46 is equivalent to a monthly salary of $275.

Yours truly,
HUGH H. LEONARD
Ass't. Secretary-Treas.

HHL:ks

Mr. Sandmeyer: You may cross examine.

Miss Williams: I have no questions.

The Court: That is all.

(Witness excused.)

Mr. Sandmeyer: I will call Mr. Erle Halliburton.

ERLE P. HALLIBURTON,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name. [250]

The Witness: Erle P. Halliburton.

The Clerk: Take the stand, please.

By Mr. Sandmeyer:

Q. Mr. Halliburton, are you connected with the Halliburton Oil Well Cementing Company?

A. Yes.

Q. In what capacity?

A. President and general manager.

Q. Are you the founder of the company?

A. Yes.

Q. When did you start in the oil well servicing business?

A. I first went to work for Perkins Oil Well Cementing Company here in California as a truck driver in 1916 or 1917. And then in 1919 I started cementing oil wells in Oklahoma.

Q. For yourself? A. Yes.

Q. What kind of equipment did you own and operate with there?

A. I didn't own any. I borrowed a pump and went out and got a cement job, and went in business.

Q. How did you take your pump to the location?

A. I had to hire a teamster with a wagon.

(Testimony of Erle P. Halliburton.)

Q. You then incorporated your business?

A. In 1924 we incorporated. [251]

Q. Possibly, as a matter of comparison, have you any idea how many jobs you did in April of this year?

A. In April of this year I think it was 4200 cementing jobs.

Q. Can you give the figures for February and March?

A. March is about 1000 less. I think a little over a thousand less. In other word, it varied from April. It was at least an increase of 25 percent over March.

Q. Now, in times other than war times, when employees are going into the armed service, is the turnover of the Halliburton employees great or small? A. It has been very small.

Q. That is, you have many men that have been with you a long time?

A. Yes. I would say that perhaps 20 of the men who were working 20 years ago, or out of about 25 men working with the company 20 years ago, perhaps 18 or 20 of them are still working with the company.

Q. During the depression years, around 1933, did your business greatly fall off, too?

A. Yes.

Q. Did you discharge any of your employees?

A. No.

Q. Mr. Halliburton, at the time the company entered into the written contracts with certain of

(Testimony of Erle P. Halliburton.)

its field employees, which we designate contract employees, would the [252] company have paid to the respective employees the amount of the weekly guarantee in their respective contracts, as compensation for hours worked at straight time only?

A. No, we could not have afforded to have made that payment.

Q. Would it have been substantially less?

A. Well, we would have had to reduce it to within an economic reason. In other words, the total wage that we can afford to pay certainly couldn't greatly increase what we now pay our employees.

Mr. Sandmeyer: That is all.

Miss Williams: I have no questions.

The Court: That is all.

(Witness excused.)

Mr. Sandmeyer: I would like to make this statement: We have the original contracts with respect to employees, but I assume that under the stipulation we have it won't be necessary to put in the written contracts.

Miss Williams: That is right, Mr. Sandmeyer.

Mr. Sandmeyer: With the court's permission I would like to read Defendant's Exhibit B, which is a letter from Mr. Halliburton to Mr. Lacy, which was introduced in evidence but not read, which happens to be true of quite a few documents here.

This letter is dated June 25, 1942.

"Mr. J. Elmer Lacy [253]
"Los Angeles, California.

"Dear Sir:

"Since the Supreme Court of the United States recently held that an employer and his employees may agree on any hourly rate of pay which equals or exceeds the minimum 30 cents per hour provided by the Act for regular time and for overtime compensation at not less than one and one-half times such basic rate and the employer may guarantee to pay the employee a minimum weekly wage for regular time and for such overtime as the necessities of the business may demand, we have prepared and are sending you under seperate cover forms of contract which the Supreme Court held valid.

"These contracts will permit the company to gauarantee its field employees a minimum weekly wage which may be paid either weekly or as monthly salaries. The employee will receive his minimum weekly wage even when the necessities of the business do not require the employee to work more than a few hours in any given week. The rates fixed in these contracts will permit an employee to work 84 hours per week to earn the fixed minimum weekly wage. In the event an employee works more than 84 hours, he will be paid additional compensation at the regular overtime hourly rate. [254]

"I am confident this arrangement will be more satisfactory to the employees as it will permit them to operate on a family budget to meet the commitments for payments on homes, automobiles, insurance, etc.

"You will please present these contracts immediately to each employee in your district for his acceptance and signature. If an employees does not agree to the provisions of this contract, you will please have him write his objections on the contract and return the same immediately. Any new employee, or old employee who has been transferred from one of the other departments and is given employment to work in the field, must sign one of these contracts. Employees such as warehousemen and others whose duties are of such a nature as will make it advantageous to the employee will be paid on a strictly hourly basis without the advantage of a guaranteed weekly minimum salary.

"It will not be possible to get these contracts executed prior to July 1, but they are to be effective as of that date and should be signed and returned at the earliest possible date, and in time for them to be used for the payroll covering the first half of July.

"The decision of the Supreme Court we feel [255] definitely settles our wage and hour problems for the past and future, and we are happy that our original plan and arrangement has been sustained.

"Yours very truly,
"Erle P. Halliburton."

The defendant rests.

The Court: Do you have any rebuttal?

Miss Williams: No rebuttal, your Honor.

The Court: Do you have any rebuttal, Mr. Sandmeyer?

Mr. Sandmeyer: No, nothing further.

The Court: If the evidence is all in, what I would like to do is to have about a 30-minute summary from each side of counsels' positions. Not that the evidence is in I do not know whether it is as expected by both sides or not. I can only determine that when I get into that matter.

I would like to have a factual summary from the government and from the defendant. It is not difficult to examine the law because there aren't many cases applicable to this kind of a wage and hour difference. It is something we do not often find in these cases. The court will not have to go back as far as it did in the last opinion, where it was necessary to start back and follow these cases through for some nearly 200 years or so. We are not bothered with going back that far. I think that is much more satisfactory to do it that way.

I am not asking you to do that this afternoon because [256] I think you will gain a good deal from it if you will go over that tonight and at 10:00 o'clock in the morning we can have an hour's benefit of each side, or 30 minutes. It will help me at good deal then to follow the notes I have and some impressions I definitely have in my mind. Sometimes I find that arguments rather change the court's impressions.

So with that, ladies and gentlemen, we will take a recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 3:30 o'clock p. m., May 18, 1944, an adjournment was taken until 10:00 o'clock a. m., Friday, May 19, 1944, whereupon the following proceedings were had:)

(Argument on behalf of the plaintiff by Miss Williams.)

(Argument on behalf of the defendant by Mr. Sandmeyer.)

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 62 inclusive contain full, true and correct copies of Complaint; Order; Bill of Particulars; Answer; Order Granting Motion to Preclude Evidence of Certain Claimed Violations; Pre-Trial Order; Opinion; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Statement of Points on Which Plaintiff-Appellant Intends to Rely on Appeal; Designation of Record on Appeal; Designation of Additional Portions of Record on Appeal; Stipulation and Order Extending Time for Filing Record and Docketing Appeal; Affidavit of Mailing; Stipulation and Order Extending Time to File Designation etc.; Stipulation for Transmission of Original Exhibits and Order for Transmission of Original Exhibits which, together with Copy of Reporter's Transcript, Original Plaintiff's Exhibits 1, 1-A to 1-P, inclusive, 2, 3, 3-A, 4, 4-A, 5 to 9 inclusive and Original Defendant's Exhibits A to E inclusive, E-1, E-2, F-1, F-2, G to J inclusive, O to R inclusive, transmitted

herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 19th day of April, 1945.

[Seal] EDMUND L. SMITH,
Clerk
By THEODORE HOCKE
Chief Deputy Clerk.

[Endorsed]: No. 11041. United States Circuit Court of Appeals for the Ninth Circuit. L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Appellant vs. Halliburton Oil Well Cementing Company, a corporation, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Southern District of California Central Division.

Filed April 20, 1945.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In The United States Circuit Court of Appeals
for the Ninth Circuit

No. 11041

L. METCALFE WALLING, Administrator of the Wage and Hour Division, United States Department of labor,

Appellant,

v.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Appellee.

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT

Appellant, L. Metcalf Walling, pursuant to Rule 19(6) of the Rules of this Court, states the points on which he intends to rely on appeal are those points set forth in the "Statement of Points on which Plaintiff-Appellant Intends to Rely on Appeal", filed on March 20, 1945, in the District Court

of the United States for the Southern District of California, Central Division.

DOUGLAS B. MAGGS
Solicitor
BESSIE MARGOLIN
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor, Attorneys for Plaintiff-Appellant.

[Endorsed]: Filed May 8, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION DESIGNATING PARTS OF RECORD NECESSARY FOR CONSIDERATION BY THIS COURT AND SPECIFYING THOSE TO BE PRINTED

It is hereby stipulated by and between the parties hereto, through their respective counsel, as follows:

1. The record necessary for consideration on appeal is the entire record on appeal as certified and transmitted by the Clerk of the District Court to the Clerk of this Court.

2. Both parties respectfully request that the following designated exhibits be considered by the Court in their original form and that the Court

dispense with their reproduction in the printed transcript of record:

Exhibit 2
Exhibit D
Exhibit E
Exhibit E-1
Exhibit E-2
Exhibit F-1
Exhibit F-2

Dated: May 4, 1945.

DOUGLAS B. MAGGS
Solicitor
BESSIE MARGOLIN
Assistant Solicitor
DOROTHY M. WILLIAMS
Regional Attorney
H. MILES RASKOFF
Associate Attorney
United States Department of Labor, Attorneys for Plaintiff-Appellant

BEN F. SAYE and
NEWLIN & ASHBURN
By: PAUL SANDMEYER
Attorneys for Defendant-Respondent

[Endorsed]: Filed May 8, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER DISPENSING WITH REPRODUCTION OF CERTAIN PARTS OF RECORD ON APPEAL

The parties having filed their stipulation herein and good cause therefor appearing, It Is Ordered that the following exhibits and parts of the record designated as necessary for consideration by this Court need not be reproduced in the printed transcript of record but will be considered by the Court in their original form:

Exhibit 2
Exhibit D
Exhibit E
Exhibit E-1
Exhibit E-2
Exhibit F-1
Exhibit F-2

Dated: May 9, 1945.

FRANCIS A. GARRECHT
United States Circuit Judge

[Endorsed]: Filed May 9, 1945. Paul P. O'Brien, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 11041

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, APPELLANT

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, APPELLEE

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Wednesday, December 12, 1945

Before: GARRECHT, MATHEWS, and HEALY, Circuit Judges

Order of submission

Ordered appeal herein argued by Miss Dorothy Williams, Regional Attorney, Department of Labor, Wage and Hour Division, counsel for appellant, and by Mr. Ben F. Saye, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Saturday, December 29, 1945

Before: GARRECHT, MATHEWS, and HEALY, Circuit Judges

Order directing filing of opinion and dissenting opinion and filing and recording of decree

By direction of the Court, ORDERED that the typewritten opinion and dissenting opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11041—Dec. 29, 1945

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, APPELLANT

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, A CORPORATION, APPELLEE

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Before GARRECHT, MATHEWS and HEALY, Circuit Judges

HEALY, Circuit Judge.

Appellant sued under § 17 of the Fair Labor Standards Act of 1938, 29 USCA § 201 et seq., to enjoin claimed violations of the overtime provisions of the Act. The appeal is from a judgment denying injunctive relief and dismissing the complaint.

Appellee is engaged in cementing, testing, and surveying oil wells, renting tools and equipment to persons engaged in the drilling or operation thereof, and furnishing skilled employees to operate the equipment. It has field employees consisting of cementers, testers, and so forth whose work is not at a fixed establishment but at wells in the field. These employees operate from camps located at varying distances from the scene of their work. Since the oil well must be cemented, tested, or surveyed at a time specified by the owner or operator, appellee has no control over the volume of work nor the time when it must be done. Much time on the job is spent by the men in simply waiting around. The employees who perform the services and operate the tools are trained men, and additional skilled labor is not obtainable in busy periods. The volume of work and the hours of employment fluctuate widely from week to week. In the slack periods the men are retained on the payroll. In some weeks the hours worked in the fashion described may exceed 100.

Prior to the effective date of the Act the field employees were paid on a monthly salary basis. In June 1942, after the decision of the Supreme Court in Walling v. A. H. Belo Corporation, 316 U. S. 624, appellee by letter to its employees inaugurated the wage plan here under attack.[1] In August of that year each field employee executed a formal written employment contract. An ex-

[1] A similar plan had been put in effect after the adoption of the Fair Labor Standards Act, but it had been abandoned March 1, 1942.

cerpt from a typical example of these contracts will serve to disclose the nubbin of the controversy between appellee and the Administrator: "Employer agrees to employ employee as a cementer and to pay employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum of not less than $63.46 for each workweek." The employee, under this arrangement, would be required to work 40 hours during any week at the hourly rate and an additional 44 hours at one and one-half times that rate before receiving any wages in excess of the minimum guarantee.

The question is whether the regular rate of pay is the hourly rate of 59 cents, as appellee contends, or whether it is the weekly guaranteed minimum of $63.46 as asserted by the Administrator. The trial court found that each of the contracts involved "was actually a bona fide contract of employment and was intended to and did really fix the regular rate at which each of the respective field employees was employed. Defendant agreed to employ and did employ, and each field employee agreed to be employed and was employed, at the hourly rate specified as the basic regular hourly rate in the written contract executed by the respective employees and defendant and in instances where the hourly rate was increased then at such increased hourly rate."

Faced with a wage agreement not substantially differing from the one before us, the Supreme Court, in Walling v. A. H. Belo Corporation, supra, reached a conclusion with which the decision below conforms. The Administrator argues that in subsequent decisions[1] the Belo case has been whittled down to a very narrow compass. However, in these later cases the Court has carefully and consistently refrained from overruling the earlier decision or denying its continued authority. Counsel for the Administrator has not been able to point out any substantial distinction between the Belo case and the present, nor have we been able to discern any difference in principle.

Accordingly, the judgment below must be affirmed.

GARRECHT, C. J. dissenting:—My associates have agreed to affirm the lower court in this case. Their determination is based on the decision of the Supreme Court in the case of Walling v. Belo Corp. (316 U. S. 624 [2 WH Cases 39]). In that case, decided in June 1942, the Court (by a 5–4 decision) approved a wage plan based upon written agreements between the parties which appeared to

[1] *Walling* v. *Helmerich & Payne*, 323 U. S. 37 [7 WHR 1054]; *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427 [8 WHR 603]; *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419 [8 WHR 602].

a majority of the Court to be a true statement of the understanding. A careful analysis of the Belo case reveals that the Court was extremely careful to limit its decision to the precise facts and evidence in that case. It did not intend to set up a formula for other employers to follow in the future to facilitate evasion of the Act.

Since the Belo case, the Supreme Court has rejected *similar*, though not *identical*, wage plans as unrealistic and artificial.[1] And just recently, in the case of Walling v. Uhlmann Grain Co. (decided October 1945), 151 F. 2d 381, the Seventh Circuit Court of Appeals (which, relying on the Belo decision, had originally approved the wage plan in the Harnischfeger case—later reversed by the Supreme Court), upon a factual situation most similar to the case at bar, stated that in its opinion the Harnischfeger and Youngerman-Reynolds cases "effectively remove all grounds for relying on the Belo case as controlling. * * * If the Supreme Court has not repudiated its holding in the Belo case, it has come so close as to leave no room for its application except upon an identical state of facts." (p. 383.)

In the case before us the evidence precludes a conclusion that the contract nomenclature represented a true statement of the understanding between the parties in the light of the Fair Labor Standards Act. It is important that we analyze the contracts in the light of all the evidence. Several days after the Supreme Court decided the Belo case the company notified each employee of that decision and proceeded to set out a wage plan whereby the employees' regular salary was denominated a "guaranty" and a formula was devised to calculate an alleged "hourly rate." In a mimeographed bulletin outlining the rules to be followed by field employees (those here under consideration), the company stated that "irregular hour field employees are now working and will continue to work on a *monthly minimum salary basis:* however, for contract purposes, the monthly salary is reduced to an equivalent *weekly salary.*" When a "contract" employee was absent from work he was docked for days off, not at the alleged "hourly rate," but at a figure determined by reducing the monthly base salary to a daily rate and multiplying by the number of days lost. Thus the absentee was docked not on the basis of his alleged "hourly rate" but on the basis of the proportionate amount of his monthly or weekly salary.

In my judgment, the contracts fixing "weekly guarantees" were for weekly wages, for variable hours. That is a realistic conclusion. The arbitrary hourly rates written into the contracts are

[1] *Walling* v. *Youngerman-Reynolds Hardwood Co.*, decided June 1945, 65 S. Ct. 1242 (8 WHR 602); *Walling* v. *Harnischfeger Corporation*, decided June 1945, 65 S. Ct. 1246 (8 WHR 603); *Walling* v. *Helmerich & Payne*, decided November 1944, 323 U. S. 37 (7 WHR 1054).

fictitious and unrelated to the facts and the evidence. It is clear here that the employees received the same weekly wages in many weeks during which they worked no overtime, and it is fantastic to presume that the weekly wages in those weeks in which they worked only a few hours—much less than 40—might have included extra compensation for overtime. It is clear also that the "basic hourly rate was fixed so that each employee * * * may work a total of 84 hours in any single workweek before receiving compensation in excess of the guaranteed weekly salary" [Exhibit C], although that arbitrarily chosen 84-hour week bore no relation to the regular or usual number of hours worked by the employees under consideration.

In order to determine the true regular hourly rate in these cases, we have only to divide the weekly wage (or guaranty as the contracts term it) by the number of hours worked in each week, thus arriving at the regularly hourly rate for each workweek. The hourly rate may vary for each workweek—in relation to the number of hours worked. That is not inconsistent with the provisions and purposes of the Act. In my opinion the "hourly rates" fixed in the contracts in this case were fictitious and calculated merely to retain the employer's prestatutory costs. In passing this Act Congress intended that it shall be costly for an employer to work his employees more than the maximum hours fixed therein. To approve a scheme calculated to pay the very same weekly wage regardless of the number of overtime hours worked would be to encourage circumvention of the statute and its purposes.

In my opinion the case should be reversed.

(Endorsed:) Opinion and dissenting opinion. Filed Dec. 29, 1945. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 11041

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, appellant

vs.

Halliburton Oil Well Cementing Company, a Corporation, appellee

Decree

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

(Endorsed:) Decree. Filed and entered December 29, 1945. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

(Title of Cause and Number)

Certificate of clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to record certified under Rule 38 of the revised rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing (487) pages, numbered from and including 1 to and including 487, to be a full, true and correct copy of the entire record excluding certain original exhibits of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of Honorable J. Howard McGrath, Solicitor General of United States, counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of March, 1946.

[SEAL]

(S) Paul P. O'Brien
PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

Order allowing certiorari

Filed May 13, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 29 1946
CHARLES ELMORE CROPLEY
CLERK

No. —

In the Supreme Court of the United States

OCTOBER TERM, 1945

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

HALLIBURTON OIL WELL CEMENTING COMPANY, A CORPORATION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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CITATIONS

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Green Head Bit & Supply Co. v. *Walling*, 49 F. Supp. 698 reversed, 138 F. 2d 453 — 16

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. ——

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

HALLIBURTON OIL WELL CEMENTING COMPANY, A CORPORATION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit entered in the above case on December 29, 1945.

OPINIONS BELOW

The opinion of the District Court (R. 24–29) is reported at 57 F. Supp. 408. The majority and dissenting opinions of the Circuit Court of Appeals (R. 480–483) are reported at 152 F. 2d 622.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 29, 1945 (R. 484). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Respondent made agreements with each of its employees specifying a basic hourly rate of pay, with a guaranty of a fixed weekly salary regardless of the number of hours worked. Although respondent's employees generally worked less than 60 hours a week, the specified hourly rate was determined by dividing the employees' weekly salary by 106 ($40+1\frac{1}{2}\times 44$), so that an employee would have to work in excess of 84 hours a week in order to earn additional compensation. The question presented is whether the arbitrary rate of pay specified in the agreement is the "regular rate" of pay upon which overtime compensation is to be computed under Section 7 of the Fair Labor Standards Act of 1938.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C., sec. 201) are as follows:

> SEC. 7 (a). No employer shall, except as otherwise provided in this section, employ

any of his employees who is engaged in commerce or in the production of goods for commerce—

* * * * *

(3) For a workweek longer than forty hours after the expiration of the second year from * * * [the effective] date [of this section],

unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

STATEMENT

Respondent performs various services for persons engaged in the drilling and operation of oil wells (R. 63). This suit relates to the "field employees," consisting of cementers, testers, cement equipment drivers, field mechanics and others (R. 31). Prior to the effective date of the Fair Labor Standards Act, the field employees were paid on a monthly salary basis (R. 13). Shortly after the enactment of the Act, respondent adopted a wage plan essentially similar to the one now in effect (R. 13–17). Except for a brief period (from March 1, 1942, until July 1, 1942, when respondent's field employees were paid a weekly salary and overtime compensation on the basis of a regular rate, computed by divid-

ing hours worked into the weekly salary)[1] (R. 17), the wage plan was essentially as follows:

The employment contract specified a "basic" hourly rate for the first 40 hours of each week and provided for the payment of not less than 1½ times this rate for hours in excess of 40. The contract also guaranteed that each employee would receive weekly, for regular time and overtime, not less than a sum equivalent to 106 times the basic rate (R. 68–70, 401). As explained by respondent, "the basic hourly rate has been fixed so that each employee * * * may work a total of 84 hours in any single workweek before receiving compensation in excess of the guaranteed weekly salary" (R. 314–315).[2]

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[1] Respondent's answer states that the plan set forth in Sec. 12 of the Administrator's Interpretative Bulletin No. 4 was adopted (R. 17). Sec. 12 (R. 235) reads as follows: "If an employee earns $23 per week but works a fluctuating number of hours, his regular rate of pay will be the average hourly rate each week. Suppose that during the course of four weeks the employee works 40, 46, 50, and 41 hours. His regular hourly rate of pay each week is approximately 57.5 cents, 50 cents, 46 cents, and 56.1 cents, respectively. For the first week the employee is entitled to be paid $23; for the second week $24.50 ($23+[6 hours×25 cents]) or ([40 hours×50 cents]+[2 hours×75 cents]); for the third week $25.30 ($23+[10 hours×23 cents]) or ([40 hours×46 cents]+[10 hours×69 cents]); for the fourth week approximately $23.28 ($23+[1 hour×28 cents]) or ([40 hours×56.1 cents]+[1 hour×84 cents])."

After the decision of this Court in *Walling* v. *Belo Corp.*, 316 U. S. 624, respondent reverted to the plan in question here.

[2] On June 25, 1942, respondent advised each employee that "from and after July 1, 1942, your basic rate of pay will

Notwithstanding the contract provisions for a basic hourly rate and a weekly guaranty, the field employees were paid in substantially the same manner as before the Act became effective. Respondent's description of the plan stated that "for the majority of employees * * * the guaranteed weekly salary has been determined by merely reducing each employee's present monthly salary to a weekly figure" (R. 315) and "irregular hour field employees are now working and will continue to work on a monthly minimum salary basis; however, for contract purposes, the monthly salary is reduced to an equivalent weekly salary" (R. 77–78). Employees continued to be paid their monthly salaries on a semimonthly basis (R. 78).

Wage increases and deductions for absences were also considered in terms of monthly salaries. When an increase was effected, the employee was informed that the new contract reflected "his change in salary from his previous monthly rate to the new rate" (R. 108). When an employee was absent from work for such reasons as sickness or "voluntary lay off," the amount by which

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be_____per hour for the first 40 hours each week and that for time over 40 hours each week, you will receive for each hour of work not less than one and one-half times such basic rate * * *, with a guaranty * * * that you shall receive weekly for regular time and for such overtime * * *, a sum not less than $_____" (plf. ex. 1A, R. 68–70, 401).

his pay was reduced was computed, not on the basis of his contract hourly or overtime rate, but on the basis of a proportionate amount of his monthly salary. As directed by respondent: "Reduce the semi-monthly base salary to a daily rate (semi-monthly pay dividend by number of days in that pay period * * *) and multiply by the number of days lost" (R. 110, plf. ex. 4, R. 217–222).

Prior to the institution of this suit, the payroll records showed only the monthly and semimonthly salaries with no provision made for hourly and overtime rates (plf. ex. 3, R. 160–177). Only hours worked in excess of 84 a week were recorded as overtime worked and only the compensation for these hours was recorded as overtime pay (R. 114, 143–144, 160–178). It was admitted that the overtime rate "has no practical use unless the employee works in excess of 84 hours in a single workweek" (R. 316). The guaranteed salary was paid when fewer than 84 hours were worked and whether more or less than 40 hours were worked in a week (R. 160–180). Respondent stated that under the contracts "the employee will receive his minimum weekly wage even when the necessities of the business do not require the employee to work more than a few hours in a given week" (R. 312).

The 84-hour workweek did not represent the regular or usual, or even the average, number of hours worked by the respondent's field employees.

A tabulation of the man-weeks of work performed from July 5, 1942 to March 11, 1944, shows that approximately 80 percent were weeks in which less than 84 hours were worked (R. 226, 384) and that approximately 13 percent were weeks in which less than 40 hours were worked (R. 384). According to respondent's estimates, the average weekly hours of work were considerably less than 84 for all classes of workers, operators averaging 61.6 hours, drivers 62.4 hours, and mechanics 56.5 hours (R. 357–362). On the basis of the average number of hours worked, the average hourly rate received by each class of employee was considerably higher than the overtime rate specified in the contract.

On January 30, 1944, after the institution of this litigation, certain changes were made in respondent's method of compensating its employees. However, the basic practices previously described remained unaltered. One change involved the payment of employees biweekly instead of semi-monthly (R. 115, 180, plf. ex. 3–A, R. 181–182). Payroll records were also revised so that, among other things, they reflected for the first time the hours worked in excess of 40 as overtime hours, as well as the rates allocated to these hours (R. 120, 146, 181–182). One of the incidents of this change was the provision that in connection with deductions for absences "one-seventh of the weekly guarantee may be considered a daily guarantee for the number of working days in the

week" (R. 116), which again averaged "basic" and "overtime" rates.

The District Court, relying on the authority of this Court's decision in *Walling* v. *Belo Corp.*, 316 U. S. 624, held that respondent's wage plan did not violate the overtime requirements of the Act (R. 28, 29, 34) and entered a judgment dismissing the complaint (R. 43–45). On appeal, the Circuit Court of Appeals, Judge Garrecht dissenting, affirmed on the ground that the case presented neither a "substantial distinction" from the *Belo* case nor "any difference in principle" (R. 481). Judge Garrecht stated, however, that in his view the contracts "were for weekly wages, for variable hours. * * * [The] arbitrarily chosen 84-hour week bore no relation to the regular or usual number of hours worked by the employees under consideration. * * * the 'hourly rates' * * * were * * * calculated merely to retain the employer's prestatutory costs" (R. 482–483). To approve such a scheme "would be to encourage circumvention of the statute and its purposes" (R. 483).

REASON FOR GRANTING THE WRIT

1. The court below has decided a Federal question in a way probably in conflict with the decisions of this Court in *Walling* v. *Helmerich & Payne*, 323 U. S. 37, *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419, and *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427. These decisions reemphasized the two-fold pur-

pose of the overtime provisions of the Act: "(1) to spread employment by placing financial pressure on the employer through the overtime pay requirement * * *; and (2) to compensate employees for the burden of a workweek in excess of the hours fixed in the Act." (323 U. S. at 40; see also 325 U. S. at 423–424.) Like the wage plans involved in the above three cases, the guaranteed wage plan here does not satisfy either of these purposes. It enables respondent "to avoid paying real overtime wages for at least the first 40 hours [44 hours in the instant case] worked in excess of the statutory maximum workweek, thus negativing any possible effect such a payment might have had upon the spreading of employment" (323 U. S. at 40–41). Since respondent incurs no additional financial cost until the employee's workweek exceeds 84 hours, there is no incentive to the employer "to reduce the hours of work [to the statutory maximum] and to employ more men." (325 U. S. at 423–424.) And the statutory purpose "of compensating the employees for the burden of a long workweek" (*ibid.*) is equally frustrated, inasmuch as respondent's plan is "so designed as to deprive the employees of their statutory right to receive for all hours worked in excess of the first regular 40 hours one and one-half times the actual regular rate" (323 U. S. at 40). The contract in effect converts the statutory maximum workweek of 40 hours into an 84-hour maximum workweek.

As this Court stated with respect to a similar "vice" in the *Helmerich & Payne* wage plan, "No plan so obviously inconsistent with the statutory purpose can lay a claim to legality" (323 U. S. at 40).

Respondent's wage plan violates not only the statutory purposes, but also "the basic rules for computing correctly the actual regular rate contemplated by Section 7 (a)" (323 U. S. at 40). The "regular rate" specified in respondent's wage plan is not based "upon the wages actually received or upon the hours actually and regularly spent each week in working" (323 U. S. at 41). It is not computed so as to take into account "all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments" (325 U. S. at 424–425), and which this Court has held must "automatically enter into the computation of the regular rate for purposes of Section 7 (a) regardless of any contract provision to the contrary" (325 U. S. at 432). Respondent's employees regularly receive their full salaries in the frequent workweeks in which they work no overtime, and even in those in which they work considerably less than the statutory maximum number of hours (plf. exs. 3 and 3A, R. 160–182). Neither the designation in respondent's contract nor the evidence that employees sometimes (when more than 84 hours are worked) receive "overtime" compensation based on the contract "regu-

lar" rates can "negative the fact that [respondent's] employees do in fact receive the higher rate" during their non-overtime hours (see 325 U. S. at 430).

Just as the guaranteed piece rates or "incentive bonuses," rather than the contract hourly rates, actually determined the employees' compensation in the *Harnischfeger* and *Youngerman-Reynolds* cases, so the full monthly and weekly salaries in the instant case actually determine the compensation paid respondent's employees for "the normal, nonovertime workweek" (see 325 U. S. at 424). This is demonstrated not only by the fact that the employees regularly receive their full salaries in the frequent workweeks in which they work no overtime, but also by the fact that the monthly or weekly salary, and not the contract "regular" rate, controls the deductions made in weeks in which an employee is voluntarily absent (plf. exs. 4, 4A; R. 217–224). It is clear that the weekly guaranty, not the designated rates, should have been used in determining the regular rate under the statute. As this Court said in the *Youngerman-Reynolds* case (325 U. S. at 424–425), "Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the wage contracts."

Although the contract here is in some respects similar to that in the *Belo* case, we believe the reliance of the court below on the *Belo* decision was misplaced. In the light of this Court's decisions in the *Helmerich & Payne, Harnischfeger* and *Youngerman-Reynolds* cases, mere similarity in contract form is insufficient to validate an otherwise artificial and unrealistic wage scheme. The *Belo* plan was upheld because the majority of this Court in that case "felt that in fixing a rate of 67 cents an hour the contracts did in fact set the actual regular rate at which the workers were employed" (*Youngerman-Reynolds* case, 325 U. S. at 426). Having found that the hourly rate was in fact genuine and controlling, this Court said that the weekly guaranty was not "inherently inconsistent" with the specified hourly rate but might reasonably be construed as consisting of the specified hourly rate for non-overtime hours and a flexible, fluctuating rate for overtime hours. 316 U. S. at 631. But the *Belo* case does not hold that the recital in a contract of an hourly rate necessarily establishes a genuine hourly rate. Other factors may conclusively show that the weekly salary and not the contract hourly rate is controlling in determining the compensation paid.

Unlike the rates in the *Belo* case, the regular rates here were "fixed * * * at a point completely unrelated to the payments actually and

normally received each week by the employees." (See the *Youngerman-Reynolds* decision, 325 U. S. at 426.) Whatever reason there may have been for holding that the 54½-hour week in the *Belo* case was consistent with the actual facts of employment, clearly here the "84-hour week bore no relation to the regular or usual number of hours worked by the employees under consideration" (dissenting opinion of Judge Garrecht, R. 483). Moreover, the intention of the parties here to set the specified hourly rate as the regular rate cannot be squared with the weekly guaranty, as this Court found it could be in the *Belo* case, on the theory that the guaranty could be construed to provide additional overtime pay in weeks which did not exhaust the guaranty at the stipulated rates. As the dissent below aptly states, "it is fantastic to presume that the weekly wages in those weeks in which [employees] worked only a few hours—much less than 40—might have included extra compensation for overtime" (R. 483).[3] Even in workweeks of more than 40 hours, respondent does not appear to have considered

[3] Examination of the *Belo* record discloses that the $40 weekly guaranty was paid whether more or less than the statutory maximum hours were worked. (*Belo* record 194–337.) However, the significance of these facts was not fully appreciated prior to this Court's decision, and, therefore, the Court's attention was not directed to them. The emphasis in the recent decisions on the compensation paid during non-overtime workweeks as indicative of the actual regular rate of pay demonstrates the importance of such facts.

the guaranty as the payment of additional overtime. The payroll records show a fixed "overtime" rate notwithstanding the contract provision for the payment of overtime at "not less than one and one-half times" the specified hourly rate (R. 120; plf. ex. 3-A, R. 181–182) and contain an entry for "additional compensation per guaranty" where compensation for the hours worked at the specified base and overtime rates did not equal the guaranty (*ibid.*).

2. The decision of the court below is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Walling* v. *Uhlmann Grain Co.*, 151 F. 2d 381, which held invalid a wage plan virtually the same as the one here in question.[4] As here, the employment contract in the *Uhlmann* case specified an hourly rate and provided for overtime compensation at 1½ times this rate. To insure the payment of a fixed weekly wage for a fluctuating workweek the contract stated that employees would be subject to call for a specified number of hours and weekly payments were predicated upon the number of hours an employee was subject to call. The employees worked an average

[4] For other circuit court of appeals decisions rejecting similar, artificially fixed "regular rates," see *Watkins* v. *Hudson Coal Co.*, 151 F. 2d 311 (C. C. A. 3), certiorari denied February 4, 1946; *Walling* v. *Alaska-Pacific Consolidated Mining Co.*, 152 F. 2d 812 (C. C. A. 9), petition for certiorari pending; *H. D. Castle Co.* v. *Walling*, 9 Wage Hour Rept. 114 (C. C. A. 5, 1946).

of about 15 hours fewer each week than their "on call" hours and were paid the same weekly salary regardless of the number of hours worked.[5] The employer's books, however, showed the amount paid as composed of both straight and overtime compensation.

In striking down the plan the Circuit Court of Appeals relied upon the decisions of this Court in *Walling* v. *Youngerman-Reynolds Hardwood Co., supra,* and *Walling* v. *Harnischfeger Corp., supra.* It emphasized the facts that (1) the contract rate was predicated upon the number of hours an employee was subject to call, which averaged about 15 more than the hours actually worked and (2) "the amount of compensation received by an employee was the same, irrespective of the number of hours worked" (p. 383). Virtually the same conditions are present here. The "regular" rate is predicated upon an 84-hour workweek although the average workweek is about 24 hours less, and the compensation of the employee is the same irrespective of the hours worked except in the small percentage of workweeks in which more than 84 hours are worked.

In regard to the *Belo* case, the court in the *Uhlmann Grain Co.* case concluded, as a result

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[5] Under the terms of their contracts, employees were supposed to receive additional compensation if required to work in excess of the number of "on call" hours stipulated in the contracts. The number of "on call" hours never exceeded 60.

of this Court's later decisions, that "if the Supreme Court has not repudiated its holding in the *Belo* case, it has come so close as to leave no room for its application except upon an identical state of facts." (151 F. 2d at 383.) The Circuit Court of Appeals for the Ninth Circuit agreed with this statement in *Walling* v. *Alaska-Pacific Consolidated Mining Co.*, 152 F. 2d 812, at p. 814,* but in the instant case the majority has upheld a wage plan which is virtually the same as the *Uhlmann* plan, in reliance upon the *Belo* decision.

3. Since the decision of this Court in the *Belo* case, many employers, like respondent here, have devised compensation contracts which superficially, at least, closely resemble the *Belo* contract. For a period after the *Belo* decision the lower Federal courts tended to uphold such wage plans so long as they specified regular and overtime rates, regardless of the realities of the situations presented. *Atlantic Co.* v. *Walling*, 131 F. 2d 518 (C. C. A. 5); *Green Head Bit & Supply Co.* v. *Walling*, 49 F. Supp. 698 (W. D. Okla.), reversed, 138 F. 2d 453 (C. C. A. 10); *Murray* v. *Noblesville Milling Co.*, 131 F. 2d 470 (C. C. A. 7); *Walling* v. *Alaska-Pacific Consolidated Mining Co.*, 56 F. Supp. 599 (W. D. Wash.), reversed, 152 F. 2d 812 (C. C. A. 9); *Walling* v. *Uhlmann Grain Co.*, 7 Wage Hour Rept. 128 (N. D. Ill.), reversed,

* The Circuit Court of Appeals for the Second Circuit has taken the same view in *Walling* v. *Richmond Screw Anchor Co.*, 9 Wage Hour Rept. 297, decided March 4, 1946.

151 F. 2d 381 (C. C. A. 7); *Walling* v. *Harnischfeger Corp.*, 145 F. 2d 589 (C. C. A. 7), reversed, 325 U. S. 427; *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 145 F. 2d 349 (C. C. A. 5), reversed, 325 U. S. 419; *Walling* v. *Helmerich & Payne*, 138 F. 2d 705 (C. C. A. 10), reversed, 323 U. S. 37; *Walling* v. *Emery Wholesale Corp.*, 49 F. Supp. 192 (N. D. Ga.), affirmed, 138 F. 2d 548 (C. C. A. 5).

This development was arrested by the later decisions of this Court in *Walling* v. *Helmerich & Payne, supra; Walling* v. *Harnischfeger Corp., supra;* and *Walling* v. *Youngerman-Reynolds Hardwood Co., supra.* But the area of continued vitality of the *Belo* decision, if any, is by no means clear. This situation has led to a conflict among the circuits and to uncertainty on the part of employers, employees, and the Administrator. A restatement of the scope of the *Belo* decision, or a reexamination of its doctrine, would seem appropriate to clarify existing uncertainties.

While it is clear that there was no intention in the *Belo* decision to sanction frustration of the overtime policy of the Act, it has become increasingly evident that the *Belo* type of contract by its very nature tends to defeat the purposes of Section 7. To the extent that the *Belo* contract permits work to be performed in excess of the

statutory maximum workweek without entailing any additional wage expense to the employer and additional compensation to the employee, it violates the basic statutory objectives. And insofar as it accepts as valid a specified hourly rate which is not the rate paid for the "normal non-overtime workweek," as, for example, when the weekly guaranty is paid whether more or less than 40 hours are worked in a week, it gives greater weight to nomenclature than to reality. These aspects of the *Belo* contract seem inconsistent in principle with this Court's subsequent opinions.

The nomenclature of the *Belo* contract has been copied by respondent in establishing its 84-hour workweek, but in actual operation the plan does not satisfy the statutory purposes. Respondent's plan illustrates the reliance placed by many employers and by some courts on the *Belo* doctrine to support wage plans which utilize the *Belo* nomenclature but which in actual fact are no less violative of the statutory terms and purposes than were the plans rejected in the three recent decisions of this Court. To avoid the multiplicity of suits resulting from the continued need to litigate the validity of each particular wage plan bearing a resemblance to the *Belo* plan, it is important that the question of the application of the *Belo* decision be settled by this Court. The instant case seems to furnish an appropriate

vehicle for reexamining the scope and doctrine of the *Belo* decision in the light of the "ingenious mathematical manipulations" to which employers have resorted (*Helmerich & Payne* case, *supra,* at p. 41) in the four-year interval since that decision.

Discrimination and unfairness in the operation of Section 7 will result unless the question presented here is settled. Some employers will pay overtime on the basis of the actual regular rates while others, on the basis of the decision here sought to be reviewed, will be enabled to employ workers beyond the statutory maximum workweek without the payment of additional wages. The evil of unfair competition with respect to hours of work and rates of overtime pay will continue without the check which Congress intended.[1]

[1] Congress clearly intended that employees subject to the Act should not be employed in excess of 2,080 hours a year without the payment of additional compensation. Sec. 7 (b) (2), as amended (29 U. S. C., Supp. IV, 207 (b) (2)), permits the requirements of Sec. 7 (a) to be relaxed, in return for a uniform wage upon an annual basis, only pursuant to an agreement which embodies the annual maximum of working hours, "made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board * * *." The pains which Congress took to ensure that the collective bargaining agent was bona fide strongly negative any purpose to give effect to individual contracts designed to relax the requirements of Sec. 7 (a). Under the contracts in this case, an employee may be required to work 4,368 hours a year (84×52) without additional compensation and, of course, there has been no collective bargaining.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. HOWARD MCGRATH,
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WILLIAM S. TYSON,
Solicitor of Labor.

MARCH 1946.

No. 74

In the Supreme Court of the United States

OCTOBER TERM, 1946

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

HALLIBURTON OIL WELL CEMENTING COMPANY, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

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JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 29, 1945 (R. 484). The petition for a writ of certiorari was filed on March 29, 1946, and granted on May 13, 1946.

The jurisdiction of this Court is based upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Respondent's employment contract guaranteed the payment of a fixed weekly amount to be paid for all workweeks in which the hours worked did not exceed 84. The contract also specified an hourly rate and provided for the payment of compensation at not less than one and one-half times this rate for all hours in excess of 40 per week. The hourly rate was computed, however, so that an employee would have to work in excess of 84 hours a week in order to earn more than the guaranty. The question presented is whether the hourly rate of pay specified in the agreement or the weekly guaranty determines the "regular rate" of pay upon which overtime compensation is to be computed under Section 7 of the Fair Labor Standards Act of 1938.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act of 1938 (c. 676, 52 Stat. 1060, 29 U. S. C., sec. 201) are as follows:

> SEC. 7 (a). No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—
>
> * * * * *

> (3) for a workweek longer than forty hours after the expiration of the second year from * * * [the effective] date [of this section],
>
> unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

STATEMENT

Respondent performs various services for persons engaged in the drilling and operation of oil wells (R. 63). This suit relates to a group of respondent's employees, consisting of cementers, testers, cement equipment drivers, field mechanics and others, who are known as "field employees" (R. 31). Shortly after the enactment of the Fair Labor Standards Act, respondent adopted the employment plan involved in this suit which, except for the period from March 1, 1942, until July 1, 1942,[1] has continued in effect until the present time (R. 13, 68–70, 71–73). The contract under

[1] From March 1, 1942, until July 1, 1942, respondent's field employees were paid a weekly salary and overtime compensation on the basis of a regular rate computed by dividing hours worked into the weekly salary (R. 17). Respondent's answer states that for this period the plan set forth in Section 12 of the Administrator's Interpretative Bulletin No. 4 was adopted (R. 17). Section 12 (R. 235) reads as follows: "If an employee earns $23 per week but works a fluctuating number of hours, his regular rate of pay will be the average hourly rate each week. Suppose that during the course of

this plan provided for a weekly guaranty and specified an hourly rate for the first 40 hours of work each week and not less than one and one-half times this rate for hours worked in excess of 40 (R. 13–14, 68–70, 71–73).[2] The guaranty was approximately 106 times the specified hourly rate (R. 73–74). As explained by respondent, "the basic hourly rate has been fixed so that each employee * * * may work a total of 84 hours in any single workweek before receiving compensation in excess of the guaranteed weekly salary" (R. 314–315).

Prior to the effective date of the Act the field employees were paid on a monthly salary basis

four weeks the employee works 40, 46, 50, and 41 hours. His regular hourly rate of pay each week is approximately 57.5 cents, 50 cents, 46 cents, and 56.1 cents, respectively. For the first week the employee is entitled to be paid $23; for the second week, $24.50 ($23+[6 hours×25 cents]) or ([40 hours ×50 cents]+[6 hours×75 cents]); for the third week $25.30 (23+[10 hours×23 cents]) or ([40 hours×46 cents]+[10 hours×69 cents]); for the fourth week approximately $23.28 ($23+[1 hour×28 cents]) or ([40 hours×56.1 cents]+[1 hour×84 cents])."

[2] The contract provision involved here is as follows:

"Now, Therefore, the Employer and Employee mutually covenant and agree as follows:

"Employer agrees to employ Employee as a _____ and to pay Employee for his services a regular basic rate of _____ cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $_____ for each workweek." (R. 63, 71–72.)

and received their compensation semimonthly (R. 13, 64). Notwithstanding the provisions in the present contract for a basic hourly rate and a weekly guaranty, the field employees continued to receive monthly salaries, paid semimonthly in substantially the same manner as before (R. 64, 78).[3] Respondent stated that "field employees are now working and will continue to work on a monthly minimum salary basis; however, for contract purposes, the monthly salary is reduced to an equivalent weekly salary" (R. 77–78). A payroll chart was devised from which "the basic hourly rate and the guaranteed weekly salary may be determined" for the particular "monthly salary desired" (R. 64, 65, 73–74, 316). Compensation under the plan was referred to by respondent as "paid on a monthly salary basis, rather than on an hourly basis" (R. 276), and it was stated that the guaranteed wage would be paid "even when the necessities of the business do not require the employee to work more than a few hours in a given week" (R. 312). Thus the hourly rate specified in the contract was never used (R. 114, 143–144, 160–178), and respondent

[3] Although respondent's employment contract remained virtually the same for the entire period during which the plan involved here was in use, several changes in the record-keeping and payment practices under the plan did occur. For example, on January 30, 1944, after the institution of this litigation, respondent began to pay its employees on a bi-weekly instead of semimonthly basis (R. 115, 180, 181–182). Other changes will be referred to as they become relevant.

admitted that the overtime rate listed in the payroll chart "has no practical use unless the employee works in excess of 84 hours in a single workweek" (R. 316). Employees were paid the same salary whenever they worked less than 84 hours a week, whether 20, 40, 60, 80 or any other number of hours (R. 160–177).

Respondent's payroll records apparently disregarded the hourly and overtime rates specified in its contracts and payroll chart in workweeks of less than 84 hours. A sample payroll sheet, forwarded by respondent to its superintendents in connection with instructions for paying employees, omitted entirely any reference to the specified hourly and overtime rates and contained only the monthly salary together with the semimonthly payment (R. 64, 65, 105, 106).[4] A later sample payroll sheet sent out with additional instructions also included the monthly salary but not the hourly and overtime rates (R. 65, 107, 114). Although this payroll sheet provided

[4] The procedure to be followed was described in the instructions as follows:

"In the column headed 'Rate', show the monthly salary which is equivalent to the guaranteed weekly salary in the employee's contract and in the column 'Extensions', show the earnings for the semimonthly period based on the monthly rate. No further posting by the field office is necessary as the Duncan office will compute and add to the guaranteed earnings any compensation for hours in excess of 84. This procedure eliminates the use of columns 'OT Pay' and 'Total Overtime' by the field pay roll offices for contract employees." (R. 82–83.)

columns for "regular time worked," "overtime worked" and "overtime pay," the superintendents were instructed to consider "84 hours or less" as regular time and "hours in excess of 84 in a week" as overtime (R. 111, 114). Overtime pay was to be calculated only for hours in excess of 84 "from the chart previously forwarded" (R. 111–112).[5] It was not until January 1944, after the institution of this litigation, that the hourly and overtime rates appearing in the contracts and payroll chart, as well as the guarantee, were reflected on the payroll sheet and that the hours worked in excess of 40 were recorded as overtime hours (R. 65, 115, 120).

Wage increases and deductions for absences were considered in terms of the monthly salaries paid the employees rather than the hourly rates

[5] The instructions issued were as follows:

"The total hours worked during each week must be filled in the proper column, then the regular time worked (84 hours or less) will be filled in the next column and overtime hours (Hours in excess of 84 in a week) will be entered in the overtime hours worked column. * * *

"Calculate overtime pay from the chart previously forwarded to all Division offices of which one copy is enclosed. Column '4', Overtime Hourly Rate, is the rate for one hour of overtime to be multiplied by the number of overtime hours in the week to determine the overtime pay entered on the pay roll for each week.

"Enter the monthly rate in the next column, extending the proportionate part of the monthly rate (in most cases one-half of the monthly rate) to the bottom line of the column 'Extensions'. On the line above enter the total Overtime Pay, which is the sum of all overtime pay listed in the Overtime Pay column." (R. 111–112.)

specified in the contracts. When an increase was effected, the employee was informed that the new contract reflected "his change in salary from his previous monthly rate to the new rate' (R. 108, 121). When an employee was absent from work for such reasons as sickness or "voluntary lay off," his pay was reduced in accordance with "the same policy that has always been in effect" (R. 318), not on the basis of his hourly or overtime rate, but on the basis of a daily wage computed as a proportionate amount of the contract guaranty. This was the regular and frequent practice whether payment under the contract was made semimonthly or, as later, biweekly (R. 106, 110, 114, 120, 138, 150, 217–222). At first the "half month's equivalent [of the monthly salary] was divided by the number of days in that particular payroll, either 15 or 16" to compute the daily deduction rate (R. 138). Later, when respondent's field employees were placed on a biweekly pay basis, instructions provided that "one-seventh of the weekly guarantee may be considered a daily guarantee for the number of working days in the week" (R. 116).

The 84-hour workweek established by the respondent as its employees' standard workweek did not represent the regular or usual, or even the average, number of hours worked by the field employees. A tabulation of the man-weeks of work performed from July 5, 1942, to March 11,

1944, shows that approximately 80 percent were weeks in which less than 84 hours were worked (R. 226, 384) and that approximately 13 percent were weeks in which less than 40 hours were worked (R. 384). According to respondent's estimates, the average weekly hours of work were considerably less than 84 for all classes of workers. The average workweek of operators was 61.6 hours, drivers 62.4 hours and mechanics 56.5 hours (R. 357–362). On the basis of the average number of hours worked, the average hourly rate received by each class of employees was considerably higher than the specified overtime rate.

The overtime rate employed was a fixed rather than a fluctuating rate. Although the contracts of employment provided that overtime was to be paid at "not less than one and one-half times" the designated hourly rate (R. 70, 71), the payroll chart contained a specific overtime rate to be used in computing compensation (R. 73, 103, 111–112). This fixed rate was entered on the payroll sheets after January 1944 (R. 116, 120). As a result, when less than 84 hours were worked in a given week, the hourly and overtime rates did not equal the guarantee. Since the additional compensation was not considered overtime, it was recorded as "Additional Compensation Per Weekly Guarantee" without allocation to either regular time or overtime (R. 116, 120).

The District Court, relying on this Court's decision in *Walling* v. *Belo Corp.*, 316 U. S. 624, held

that respondent did not violate the overtime requirements of the Act in computing overtime compensation on the basis of the hourly rates specified in the contracts (R. 28, 29, 34) and entered a judgment dismissing the complaint (R. 43–45). The Circuit Court of Appeals affirmed on the ground that the case presented neither a "substantial distinction" from the *Belo* case nor "any difference in principle" (R. 481). Judge Garrecht dissented stating that in his view the contracts "were for weekly wages, for variable hours * * *. The arbitrary hourly rates written into the contracts are fictitious and unrelated to the facts and the evidence. * * * [The] arbitrarily chosen 84-hour week bore no relation to the regular or usual number of hours worked by the employees under consideration. * * * In my opinion the 'hourly rates' fixed in the contracts in this case were fictitious and calculated merely to retain the employer's prestatutory costs" (R. 482–483).

SPECIFICATION OF ERRORS

The court below erred:

1. In holding that the hourly rates specified in the contracts between the respondent and its field employees were the "regular rates" at which the employees were employed within the meaning of Section 7 of the Fair Labor Standards Act.

2. In affirming the judgment of the District Court which denied petitioner's prayer for an injunction.

SUMMARY OF ARGUMENT

The hourly rate specified in respondent's wage contract is not the statutory "regular rate" because it is not in fact the measure of the compensation normally received by respondent's employees. It is clear from the operation of respondent's compensation plan that the contract guaranty actually controls the wages paid in the normal workweek. The only manner in which the specified hourly rate can be squared with the guaranty is by assuming a fluctuating overtime rate which would encompass all compensation in excess of that paid for nonovertime work. But this assumption is contradicted by respondent's use of a fixed overtime rate. Also, it would not account for the payment of the guaranty in weeks when no overtime was worked. The artificiality of the contract rates is obvious because of their failure to compel the payment of additional compensation for hours worked in excess of the statutory maximum. Moreover, recognition of the specified hourly rate as the regular rate would frustrate the statutory policy of making more expensive to the employer hours in excess of the statutory maximum and of requiring premium pay to employees for overtime hours.

The decision of this Court in *Walling* v. *Belo Corp.*, 316 U. S. 624, should not control here. There are factual distinctions which permit a different result. For example, in the present case additional compensation could not be earned until

84 hours had been worked, in *Belo* this period was limited to 54½ hours. Unlike the employer in the *Belo* case, respondent used a fixed overtime rate which made it necessary to provide additional compensation to equal the guaranty. If the differences are not sufficient to distinguish the cases, the *Belo* decision should not be followed because it is inconsistent with the later decisions of the Court.

ARGUMENT

I

THE HOURLY RATE SPECIFIED IN RESPONDENTS' EMPLOYMENT CONTRACTS IS NOT THE "REGULAR RATE" WITHIN THE MEANING OF SECTION 7 OF THE FAIR LABOR STANDARDS ACT

A. Specification of an hourly rate in an employment contract does not determine the "regular rate" under Section 7

The decisions of this Court have clearly established that the hourly rates specified in contracts of employment are not necessarily the regular rates at which the employees are employed within the meaning of Section 7 of the Fair Labor Standards Act. Specified regular or hourly rates were disregarded in determining the statutory regular rate in *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419, where the contract also contained a piece rate guaranty, in *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427, where the employee was guaranteed a "job price," known as an "incentive bonus" or "piece-work earnings," and in *Walling* v. *Helmerich & Payne*, 323 U. S. 37, where the specified regular rate was allocated

to only part of a daily tour of duty and an overtime rate to the balance. In each of these cases the Court emphasized that the regular rate was the rate actually paid for the time regularly spent in working, notwithstanding the contract designation of a different rate. And, where guaranteed rates yielded more than the prescribed hourly rates, it was stated that the latter "lose their significance in determining the actual rate" and that the former "would actually be the rates paid." *Harnischfeger* case, *supra*, at 432; *Youngerman-Reynolds* case, *supra*, at 432. Therefore, in the instant case, whether the contract hourly rates are the regular rates depends, not upon the terms of the contract, but upon whether the compensation received by the employees is actually determined by the specified rates or by the guaranty provided in the contract.

B. The hourly rates specified in the contracts did not in fact control the compensation received by respondent's employees

A realistic appraisal of respondent's compensation plan compels the conclusion that in intendment and in practice the contract guaranty controlled the wages paid respondent's employees and that the specified hourly rates did not genuinely reflect the actual rates at which the employees were employed. As we have seen, prior to the effective date of the Act, respondent's employees were paid a monthly salary (R. 13). The wage plan put into effect after enactment of the statute

and reintroduced in July 1942 continued, in practical effect, the monthly salaries previously paid without the payment of additional compensation for hours in excess of the statutory maximum. Although the wage contracts provided for hourly rates and overtime compensation at not less than one and one-half times the stated rate, these rates were admittedly devised so that employees might work 84 hours a week without receiving compensation in excess of the guaranteed amount (R. 80, 314–315). However, less than 84 hours were worked in approximately 80 percent of the weeks worked (R. 226, 384). Thus, in a substantial majority of cases the compensation to be paid was, and could be, ascertained only by application of the guaranty provided in the contract. Payment at the specified hourly and overtime rates for weeks in which fewer than 84 hours were worked would have yielded a sum less than that actually paid. Since the guaranty actually controlled the compensation paid, it must be considered, under the decisions of this Court, as determinative of the regular rate. *Youngerman-Reynolds* case, *supra; Harnischfeger* case, *supra.*

The controlling importance of the contract guaranty in fixing compensation was recognized in respondent's own payroll practices. When the guaranty plan was reinstituted in July 1942, the sample payroll sheet which accompanied the respondent's instructions did not even contain

the hourly rates but carried only the guaranteed monthly salaries and the amount of the semi-monthly payment (R. 105, 106). A modified sample payroll sheet sent out shortly thereafter also contained the monthly salary but not the hourly rates (R. 114). This payroll sheet and the accompanying instructions furnished further evidence of the meaningless character of the specified hourly rates. Notwithstanding the contract provision that the "regular basic rate" was to be paid for the first 40 hours of a workweek and the overtime rate for all additional hours (R. 71), respondent's division superintendents were instructed to record 84 hours or less as regular time worked and hours in excess of 84 as overtime (R. 111). These instructions realistically evaluated the effect of the employment contract for, as stated by respondent, the "overtime rate * * * has no practical use unless the employee works in excess of 84 hours in a single workweek" (R. 316). And the designated regular rate has no greater practical use.

Other aspects of respondent's compensation practices demonstrate that the guaranty, rather than the specified hourly rate, was the governing factor in the employment contract. Deductions made for absences were not calculated at overtime rates in an overtime week or at regular rates in a non-overtime week, as they would have been if the hourly rates were in fact employed as the

measure of compensation. Instead, the guaranty was resorted to again to fix the amount of the reduction. When employees were paid on a semimonthly basis their pay was reduced by a pro rata portion of the semimonthly salary (R. 110, 138), and when payment was changed to a biweekly basis by a pro rata portion of the weekly guaranty (R. 116, 150).

Thus the method of operation under respondent's employment contract clearly establishes the guaranty as the principal effective element in determining the wages actually paid and, therefore, as the measure of the statutory regular rate. It cannot be urged here that the guaranty does not control because a flexible overtime rate of not less than one and one-half times the basic rate may account for the difference, in workweeks of less than 84 hours, between the compensation at the specified regular rate and the compensation actually paid in accordance with the guaranty. Cf. *Walling* v. *Belo Corp.*, 316 U. S. 624, 632. There are at least three obvious answers to this argument. (1) The fixed overtime rate employed by respondent specifically negates the use of a flexible overtime rate (R. 73, 103, 111–112). (2) Even if a fixed overtime rate were not employed the only means of ascertaining the amount of overtime compensation payable in workweeks of less than 84 hours would be by reference to the guaranty and not to a hypothetical and undeter-

mined overtime rate. (3) The payment of the guaranty in workweeks of less than 40 hours when no overtime was worked precludes the allocation of the additional compensation to overtime hours (R. 160–177). Since in actual practice the guaranty determines the compensation paid for the first 84 hours worked, it must be concluded that the guaranty necessarily furnishes the basis for determining the regular rate of pay under the Act. *Walling* v. *Youngerman-Reynolds, supra; Walling* v. *Harnischfeger Corp., supra.*

Even if we assume a situation contrary to the facts of this case, in which fluctuating overtime rates did account for all compensation paid, the very artificiality of such rates would suffice to demonstrate their invalidity. Cf. *Walling* v. *Helmerich & Payne, supra.* The manner in which a fluctuating overtime rate would operate illustrates its fictional character. Under the terms of respondent's guarantee, if an employee worked only 41 hours he would be paid overtime at the approximate rate of 6,600 percent of his specified regular hourly rate; he would be paid at the approximate rate of 3,300 percent for two hours overtime, 2,200 percent for three hours of overtime, and at a decreasing overtime rate for additional hours of work (R. 73). This anomaly—a decreasing ratio between the regular rate and the overtime rate as the overtime hours increase—disregards not only the historical function which

an overtime rate is intended to fulfill but also the general practice in American industry today.[6]

A plan which depends upon a fluctuating overtime rate for its validity is no less artificial than so-called "x-plans" which incorporate a formula for reducing a weekly salary to a regular rate.[7] Under the x-plans, application of the rates arrived at by use of the formula will produce the predetermined salary which was in fact paid. Such plans have been consistently rejected by the courts.[8] Both the fluctuating overtime and the x-plans by "ingenious mathematical manipulations" (see *Helmerich & Payne* case, 323 U. S. 41), apply varying rates to achieve a constant weekly wage for a workweek in excess of the statutory maximum. In the former a variable overtime rate and a constant "regular" rate are

[6] See, for example, United States Bureau of Labor Statistics, Bulletin No. 686, *Union Agreement Provisions*, 1942, p. 91, particularly paragraphs A and B; and United States Bureau of Labor Statistics, Bulletin No. 823, *Union Agreements in the Petroleum Refining Industry in Effect in 1944*, p. 7.

[7] Under the x-plan the "regular" rate for employees employed more than forty hours per week is determined by dividing their weekly earnings by the total number of hours employed plus one-half of the number of hours employed in excess of 40 hours.

[8] *Walling* v. *Helmerich & Payne*, 138 F. 2d 705 (C. C. A. 10); *Watkins* v. *Hudson Coal Co.*, 151 F. 2d 311 (C. C. A. 3); *Castle* v. *Walling*, 153 F. 2d 923 (C. C. A. 5); *Asselta* v. *149 Madison Ave. Corp.*, June 17, 1946 (C. C. A. 2), 6 Wage Hr. Cases 99; *Patsy Oil & Gas Co.* v. *Roberts*, 132 F. 2d 826 (C. C. A. 10); *Seneca Coal & Coke Co.* v. *Lofton*, 136 F. 2d 359 (C. C. A. 10).

manipulated to equal the weekly salary while in the x-plan the formula utilizes a constant overtime rate and a variable "regular" rate. In both instances the so-called regular rates are derived in essentially the same manner. Under the fluctuating overtime plan the "regular" rate is computed by dividing the weekly salary by 40 plus one and one-half times the number of hours a predetermined maximum workweek exceeds 40. Under the x-plan the "regular" rate is computed by dividing the weekly wage by 40 plus one and one-half times the number of hours actually worked in excess of 40.

The inherent deficiency of the x-plan was recently described by the Circuit Court of Appeals for the Second Circuit as follows: "It does negate the statutory purposes to base employment upon a regular unvarying weekly wage for a workweek in excess of the statutory minimum hours and then merely break that down into so-called regular and overtime hourly rates by means of a formula so the weekly wage actually definitely fixed is seemingly transferred into an hourly wage rate. That amounts but to an illusion of overtime pay after a forty-hour workweek because of overtime work unless there is overtime not only in excess of the statutory workweek but also in excess of the agreed workweek." *Asselta* v. *149 Madison Ave. Corp., supra.* Similarly, a fluctuating overtime plan provides only an illusion of overtime compensation for hours worked in excess of 40.

C. Respondent's artificial wage plan frustrates the statutory purposes

We have shown that the specified regular and overtime rates were artificial and of no effect and that the contract guaranty was intended to and in fact did control the compensation received by respondent's employees for the first 84 hours of a workweek. As we have seen, for these reasons alone, the guaranty is the measure of the statutory regular rate. But in any event, since statutory purposes would be defeated by respondent's scheme, the stated regular rate can not be regarded as the regular rate under the statute. Cf. *Helmerich & Payne* case, *supra*.

In each of the three decisions of this Court previously cited (*Walling* v. *Helmerich & Payne, supra; Walling* v. *Youngerman-Reynolds Hardwood Co., supra; Walling* v. *Harnischfeger, supra*) the Court stressed the purposes of the overtime requirements of the Act in invalidating the wage plans there involved. As pointed out in the *Helmerich & Payne* case, "The Congressional purpose of enacting § 7 (a) was twofold: (1) to spread employment by placing financial pressure on the employer through the overtime pay requirement * * *; and (2) to compensate employees for the burden of a workweek in excess of the hours fixed in the Act" (323 U. S. at 40; see also *Walling* v. *Youngerman-Reynolds*, 325 U. S. at 423–424). The section was thus designed to increase "the employer's labor costs by 50% *at the end of the 40-hour week*" and to give

"the employees a 50% premium for all excess hours" (*Youngerman-Reynolds* case, *supra*, at 423, italics supplied; see also *Walling* v. *Harnischfeger Corp.*, 325 U. S. at 431). The designated hourly rates failed to effectuate the statutory policy in these cases. As a result they were disregarded in determining the regular rate under the Act.

Similarly the guaranteed wage plan here does not satisfy either of these purposes. It enables respondent "to avoid paying real overtime wages for at least the first 40 hours [44 hours in the instant case] worked in excess of the statutory maximum workweek, thus negativing any possible effect such a payment might have had upon the spreading of employment." *Helmerich & Payne* case, 323 U. S. at 40. Since the employee receives the same wages whether he works 30, 50, 70 or 84 hours a week, the respondent incurs no additional financial cost until the employee's workweek exceeds 84 hours. Accordingly, there is no incentive to the employer "to reduce the hours of work [to the statutory maximum] and to employ more men." *Walling* v. *Youngerman-Reynolds*, 325 U. S. at 424. And the statutory purpose "of compensating the employees for the burden of a long workweek" (*ibid.*) is equally frustrated, inasmuch as respondent's plan is "so designed as to deprive the employees of their statutory right to receive for all hours worked in excess of the first regular 40 hours one and one-

half times the actual regular rate." *Walling* v. *Helmerich & Payne*, 323 U. S. at 40. This frustration of the statutory purpose is not made any the less real by the payment of additional compensation to employees who sometimes work more than 84 hours, more than twice the statutory maximum. The contract cannot convert the statutory workweek of 40 hours into an 84-hour workweek.

It is clear that Congress did not contemplate that a plan like respondent's would carry out the policy of spreading employment by imposing an economic limitation on hours of work. The means devised to effectuate this limitation was the familiar and historical method of exerting pressure on the employer to reduce hours by providing for the payment of additional wages at premium rates for work performed in excess of a predetermined standard workweek. The workweek determined by the Congress to be standard was one which was "in conformity with current practice as regards the bulk of American business" at the time the Act became effective.[9] (The Cotton Textile Institute, *Current Information*, Vol. 4, No. 7, November 10, 1938, p. 71.). And the premium rate of time and one-half for overtime

[9] The standard workweek had declined from 60 hours in 1896 to 48.4 hours in 1926 (Douglas, Paul H., *Real Wages in the United States 1890–1926*, 1930, p. 150) and to 40.4 hours by February 1937 (Millis, Harry A., and Montgomery, Royal E., *Labor's Progress and Some Basic Labor Problems*, 1938, pp. 481 and 485).

had been generally incorporated in union agreements covering industries and trades in which the workers were organized; thousands of others had become familiar with the principle of time and one-half for overtime work as a result of the awards of the National War Labor Board[10] (World War I) and the industrial codes established under the National Industrial Recovery Act.[11]

The historical function of premium rates for overtime work in effectuating organized labor's efforts to reduce the workday and workweek is clear. See Barnett, George E., "The Printers", *American Economic Association Quarterly*, October 1909, Vol. X, No. 3, p. 157. As early as 1863 a union contract provided the equivalent of time and one-half for overtime beyond 60 hours a week;[12] and in the decades immediately following it was not uncommon for trade unions to obtain premium overtime rates for a shorter workweek or workday.[13] When the Fair Labor Standards

[10] Reeder, Robert P., *Analysis of the Awards of the National War Labor Board* (1919), pp. 22 and 48; United States Department of Labor, *Monthly Labor Review*, March 1918, p. 71, April 1918, p. 183, and May 1918, pp. 127–128, 133, 137, 142.

[11] N. R. A. Division of Reviews, Work Materials No. 35, Part B, *Labor Provisions in the Codes* (1936), pp. 84–93, 105.

[12] United States Bureau of Labor Statistics, *History of Wages in the United States from Colonial Times to 1928* (Bulletin No. 499, October 1928), pp. 491–498, 514–516.

[13] See, for example, Fifth Annual Report of the Bureau of Statistics of Labor of the State of New York (1887), pp. 187, 275, 301.

Act was enacted, organized labor had achieved a maximum workweek of 40 hours or less in many extractive, manufacturing, and service industries. For example, collective bargaining agreements called for a 30-hour week for longshoremen on the Pacific Coast, a 35-hour week in the coal mining industry, a 36-hour week in the men's clothing industry, a 37½-hour week in the newspaper publishing industry and a 40-hour week for those employed in the iron and steel, stone, rubber, petroleum refining, metal mining, food and agricultural processing, and many other industries. United States Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review* (February 1938), Vol. 46, No. 2, pp. 341–343. It must be assumed, we submit, in the light of the continuous drive for shorter working hours and the role played by premium overtime rates in achieving them, that these collective agreements established a genuine limitation on the number of hours an employee could work each week. Thus, in enacting a law designed to spread employment, Congress utilized a technique developed by trade unionists who had realistically recognized many years before that "overtime shortens the seasons of employment" and that "when there are men unemployed, to employ more men fewer hours is better" Samuel Gompers, *Report of the United States Industrial Commission*, Vol. VII, p. 614 (1901).

Respondent's plan pays lip service to the statutory purposes by establishing a fictional 40-hour

workweek which stands in striking contrast to the genuine 40-hour week prevalent in industry at the time of the Act's passage. It actually subverts the intent of Congress, however, by substituting an 84-hour week thereby encouraging work in excess of the statutory maximum. Not only is the statutory incentive towards the reduction of working hours removed when an employee receives the same wages whether he works 35 or 84 hours but there is incentive to increase the length of the workweek so as to reduce the hourly labor cost. In such circumstances, an employer is not likely to employ additional workers to achieve a desired level of production within a 40-hour workweek, but "because there is no increase of labor cost between the statutory maximum and the hours contracted for * * *, the employer has a financial inducement to require hours beyond the statutory maximum." *Walling* v. *Belo Corp.*, 316 U. S. 624, dissenting opinion, at 639. The result of validating such a plan is the complete nullification of the overtime provisions of the Act for incalculable numbers of workers whom Congress itself has not seen fit to exempt specifically.

The frustration of the Act's overtime policy by respondent's plan can hardly be justified on the theory that it achieves the security of a regular and uniform weekly income. Cf. *Walling* v. *Belo Corp., supra.* Unlike annual wage and annual employment plans, respondent's plan does not assure continuity of employment but merely guar-

antees a minimum weekly wage for those weeks during which the worker is employed. Only plans which assure regular employment and income on an annual basis recognize "the significance of the fact that workers consume the year around, and, properly to arrange their financing and budgeting should earn income by the year." Chernick, Jack, and Hellickson, George C., *Guaranteed Annual Wages*, 1945, p. 8.[14] In recognition of this economic fact and in order to permit the continuance and extension of guaranteed wage and employment plans within the framework of the overtime requirements of the Act, Congress in Section 7 (b) (2) of the Act set forth the conditions under which employers and employees could contract to regularize employment on an annual

[14] See also Feldman, Herman, *Stabilizing Jobs & Wages*, 1940, p. 167. For example, the annual employment plan developed by the Proctor & Gamble Company has been in operation since 1923. Under this plan the employee is guaranteed at least 48 weeks of employment, at the prevailing wage, in each calendar year. In a slack period the weekly hours of work may be reduced, but not below 30 hours or 75 percent of the regular 40-hour workweek. See Chernick, Jack, and Hellickson, George C., *Guaranteed Annual Wages*, 1945, pp. 29–30.

The "flexible wage plan" adopted by the Nunn-Bush Shoe Company in 1935 guarantees 52 pay checks a year to "eligible employees." The amount of weekly pay varies with the wholesale value of the company's product, all wage payments other than overtime being made from a fund established by setting aside a fixed percentage of the wholesale value of shoes sold. The regular workweek is 40 hours. No worker under the plan was dismissed from 1935 to 1945. Bureau of Labor Statistics, *Guaranteed Employment & Annual Wage Provisions in Union Agreements*, 1945, pp. 6–7.

basis. This provision clearly indicates that Congress was well aware of "the special problems confronting employer and employee in businesses where the work hours fluctuate from week to week" and from season to season. See *Walling* v. *Belo Corp.*, 316 U. S. at 635. It also shows the manner and extent to which Congress intended to accommodate the overtime provisions of the Act to the security of a regular income.

Section 7 (b) (2), as amended (29 U. S. C., Supp. V, 207 (b) (2)),[15] permits the requirements of Section 7 (a) to be relaxed, in return for employment upon an annual basis, pursuant to an agreement which embodies the annual maximum of working hours, "made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board." The section also imposes an annual maximum of 2,080 hours (an

[15] Section 7 (b) (2) provides: "No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed * * * (2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand and eighty hours during any period of fifty-two consecutive weeks * * * and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed."

average of 40 hours a week) compared with the contracts in this case, under which an employee may work 4,368 hours a year (84 x 52) without additional compensation. Clearly, respondent's contracts do not conform to this pattern established by Congress to meet the problems in businesses where the work hours fluctuate.[16]

Moreover, any advantage of a minimum guaranty for fluctuating hours in weeks of actual employment is also assured by payment of a guaranteed weekly salary and additional one-half time for hours in excess of the statutory maximum under the principles of *Overnight Motor Co.* v. *Missel*, 316 U. S. 572.[17] Recognition of the guaranty as the

[16] See also Sections 7 (b) (1), 7 (b) (3), 7 (c). Moreover, fluctuations have sometimes been reduced under the economic pressure exerted by the payment of genuine overtime compensation. In industries characterized by a high degree of seasonal fluctuation, like the construction and apparel industries, the 40-hour week has been established for some time. Indeed, the 40-hour workweek was introduced as a means of reducing seasonal fluctuations and of spreading employment among a larger number of men and over more weeks in the year. Haber, Williams, *Industrial Relations in the Building Industry* (1930), pp. 117–119; *Report & Proceedings of the 19th Convention of the International Ladies Garment Workers* (1928), p. 11. In this connection, a study made of the wages paid employees engaged in petroleum production and the drilling of oil and gas wells in Oklahoma, Texas, and Louisiana may be significant. Approximately "99 percent of the establishments in the survey paid time and a half for hours in excess of 40 per week, and over 20 percent also paid this premium rate for hours in excess of 8 in any 1 day" United States Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, February 1945, p. 351.

[17] See Feldman, Edward S., *Algebra and the Supreme Court*, 40 Ill. Law Rev., 512–513 (1946).

genuine measure of compensation would achieve this result. As the dissenting judge in the court below said (R. 483): "In order to determine the true regular hourly rate in these cases, we have only to divide the weekly wage (or guaranty as the contracts term it) by the number of hours worked in each week, thus arriving at the regular hourly rate for each workweek. The hourly rate may vary for each workweek—in relation to the number of hours worked. That is not inconsistent with the provisions and purposes of the Act." Determining the regular rate in this manner (1) squares with the actualities of employment, (2) preserves the assurance of minimum weekly compensation, and (3) avoids violence to the statutory purpose.

II

THE DECISION OF THIS COURT IN THE *BELO* CASE SHOULD NOT CONTROL HERE

In holding that respondent's compensation practices under its contract of employment did not violate the overtime requirements of the Act, the court below relied upon the decision of this Court in *Walling* v. *Belo Corp.*, 316 U. S. 624. It is our view (1) that there are sufficient differences to distinguish this case from the *Belo* case, particularly in the light of the limited scope of the *Belo* decision under the more recent decisions of this Court in the *Helmerich & Payne*, *Youngerman-Reynolds*, and *Harnischfeger* cases, and (2) that, if the doctrine of the *Belo* decision

has not been narrowed sufficiently to remove the instant case from its scope, it is inconsistent with both the aforementioned decisions of this Court and the purposes of the Act, and should be overruled.

The *Belo* plan was upheld because the majority of this Court in that case "felt that in fixing a rate of 67 cents an hour the contracts did in fact set the actual regular rate at which the workers were employed." See *Youngerman-Reynolds* case, 325 U. S. at 426. Having found that the hourly rate was in fact genuine and controlling, this Court said that the weekly guarantee was not "inherently inconsistent" with the specified hourly rate but might reasonably be construed as consisting of the specified hourly rate for nonovertime hours and a fluctuating rate for overtime hours. *Belo* case, 316 U. S. at 631. But the *Belo* case does not hold that the recital in a contract of an hourly rate necessarily establishes a genuine hourly rate and it is clear from this Court's subsequent decisions that the contract would not have been upheld if the artificiality of the specified hourly rates had been adequately established.

Important factual differences highlight the artificiality of the hourly rates here. Respondent's employees could earn no additional compensation unless they worked more than 84 hours in a week, whereas the *Belo* contract permitted additional payments after 54½ hours. The tabulation of the man-weeks of work performed by respondent's employees from July 5, 1942, to

March 11, 1944, discloses that the vast majority of the employees worked considerably less than 84 hours a week most of the time (R. 384); respondent's own estimates show that the average workweek approximated 60 hours (R. 384). Whatever reason there may have been for holding that the 54½-hour week in the *Belo* case was consistent with the actual facts of employment, clearly here the "84-hour week bore no relation to the regular or usual number of hours worked by the employees under consideration" (dissenting opinion of Judge Garrecht, R. 483). Thus, unlike the guarantee in the *Belo* case, the guarantee here did not even approximate the amount earned by the application of the artificially specified rates in the substantial majority of the workweeks. Moreover, the theory employed by the Court in the *Belo* case to square the specified hourly rate with the weekly guaranty cannot be applied here. In the *Belo* case it was thought that all compensation above that for regular hours at the specified hourly rate might be considered overtime compensation by the use of a fluctuating overtime rate. In the instant case, as already noted, respondent's employees received their weekly salaries in the substantial number of weeks in which they worked less than 40 hours. In these workweeks the amount paid in excess of that due on the basis of the specified hourly rate cannot be explained as overtime compensation, for there were no overtime hours. See *Belo* decision, 316 U. S. at

632.[18] Even in workweeks of more than 40 hours, respondent did not consider the portion of the guaranty in excess of 40 times the specified rate as being paid for overtime work. As we have seen, a specific overtime rate was provided and the payroll records contained an entry for "Additional Compensation Per Guarantee" where compensation for the hours worked at the hourly and overtime rates applied did not equal the guaranty (R. 120; pltf. ex. 3A, R. 181–182).

In view of these differences between the operation of the *Belo* and respondent's contracts, the cases can be distinguished. If the two cases are not considered distinguishable, however, we submit that the *Belo* decision should not be followed because its application would be at variance with the reasoning of the subsequent decisions of this Court in which wage plans which failed to give effect to the statutory purposes of the overtime requirements of the Act were struck down.

We have shown that under respondent's wage plan (1) the contract guaranty in fact determines the compensation paid its employees for the first 84 hours of work, (2) the specified hourly rate is artificial in character and is not employed to ascertain the compensation payable to respond

[18] Examination of the *Belo* record discloses that the $40 weekly guaranty was paid whether more or less than the statutory maximum hours were worked. (*Belo* record 194–337.) However, the significance of these facts was not fully appreciated prior to this Court's decision, and, therefore, they were not emphasized when that case was under consideration.

ent's employees, and (3) to give effect to the specified hourly rate would thwart the dual statutory purposes of (a) spreading employment by increasing an employer's labor cost for hours in excess of 40 and (b) giving employees premium pay for work in excess of the statutory maximum. This plan cannot be sustained under the decisions of this Court in the *Helmerich & Payne, Youngerman-Reynolds* and *Harnischfeger* cases. In these decisions specified hourly rates were held not to establish the statutory regular rate because actually inoperative, artificial or contrary to the statutory design. Application of the *Belo* decision in this case would require a rejection of the sounder principles of the later decisions."

[19] The potentialities of avoiding the overtime provisions of the Act by a broad application of the *Belo* doctrine is illustrated by the attitude of some businessmen to the decision. One employer advised that the *Belo* plan "makes it unnecessary to compute overtime work from week to week," that "no additional payments are necessary unless the employee works more than the number of hours determined by his contract," and that "employers following the *Belo* method avoid the payment of compensation in excess of a guaranteed weekly wage". Hubbell, W. C., *How to Simplify Computing Overtime Wages*, Rand McNally Bankers Monthly, June 1943, p. 260. Mr. Hubbell described the technical aspects of the plan as follows: "The employer and employee enter into a written contract fixing the employee's hourly rate of pay (not less than the legal minimum). The employer agrees to pay, in addition, a 'bonus' equal to the difference between the compensation determined at the hourly rate (with time and one-half for overtime hours) and a guaranteed weekly wage which the employee is to receive in any event. The hourly rate is fixed at an amount which with overtime, would rarely, if ever, exceed the guaranteed wage" (*ibid.*).

The effect of these decisions on the scope of *Belo* is made clear by the view taken by three Circuit Courts of Appeals that if this Court "has not repudiated its holding in the *Belo* case, it has come so close as to leave no room for its application except upon an identical state of facts." *Walling* v. *Uhlmann Grain Co.*, 151 F. 2d 381, 383 (C. C. A. 7); *Walling* v. *Alaska-Pacific Consolidated Mining Co.*, 152 F. 2d 812, 814 (C. C. A. 9); *Walling* v. *Richmond Screw Anchor Co.*, 154 F. 2d 780 (C. C. A. 2). It may be appropriate at this time to define the area of *Belo's* continued vitality, if any, so that employers will know that plans designed to avoid the Act's overtime requirements will not be upheld.

CONCLUSION

For the foregoing reasons the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

October Term, 1945.

No. [redacted]

L. METCALF WALLING, Administrator of the Wage and Hour Division, United States Department of Labor,

Petitioner,

vs.

H. REMINGTON GILLILAND, a corporation,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

October Term, 1945.

No. 1018.

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Introductory Statement.

This action was instituted by the Administrator of the Wage and Hour Division, United States Department of Labor, under Section 17 of the Fair Labor Standards Act of 1938 to enjoin respondent from violating the overtime provisions (Sec. 7(a)) and the record keeping requirements (Sec. 11(c)) of the Act. By stipulation of the parties the charge of violation of the record keeping requirements was eliminated and the action was confined to respondent's field employees in California carried on its "contract" payroll subsequent to July 1, 1942 [R. 63, 66].

Each employee executed a formal written contract with respondent, of which the following is typical:

> "Employer agrees to employ Employee as a cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $63.46 for each workweek." [R. 455, 64, 33.]

By stipulation of the parties [R. 67] and the pre-trial order [R. 23] the issue for trial was limited to the question:

> Did the field employees receive compensation for their hours of work in excess of 40 hours in a week at rates not less than one and one-half times the regular rates at which they were employed?

From all the evidence the District Court found that "Each of said contracts was actually a *bona fide* contract of employment and was intended to and did really fix the regular rate at which each of the respective field employees was employed" [R. 34] and that "each field employee was compensated and paid by defendant in accordance with the terms of the written contract"; that "for each hour worked in excess of 40 in each workweek . . . each field employee received from defendant as compensation an amount equal to or in excess of an amount one and one-half times the hourly rate specified in the written contract of employment"; that "defendant agreed to employ and did employ, and each field employee agreed

to be employed and was employed, at the hourly rate specified as the basic regular hourly rate in the written contract . . ." [R. 34, 35]. The District Court denied an injunction and dismissed the complaint. The Circuit Court of Appeals for the Ninth Circuit concurred in the findings and holding of the District Court and affirmed the judgment.

The opinion of the District Court [R. 24-29] is reported at 57 Fed. Supp. 408. The opinion of the Circuit Court of Appeals with dissenting opinion [R. 480-483] is reported at 152 F. (2d) 622.

Question Presented.

The issue in this case as settled by the parties and court order is whether or not overtime hours were compensated at rates not less than one and one-half times the regular rates of pay. The ultimate question is:

> Is the regular basic hourly rate specified in the employment contracts the "regular rate" of pay upon which overtime compensation is to be computed under Section 7 of the Fair Labor Standards Act of 1938?

Statement.

Petitioner's statement is not sufficiently complete or accurate to give a true picture of the factual situation.

Respondent is engaged in the business of oil well servicing—cementing, testing and surveying oil wells, renting tools and equipment to persons engaged in the drilling or operation thereof and furnishing skilled employees to operate the equipment. The employees involved are referred to as "field employees" and consist of cementers, testers, electric survey operators, drivers and field mechanics. Their work is not at a fixed establishment but at

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wells in the field located 35 or 40 miles from the camp or base [R. 424]. The oil well must be cemented, tested or surveyed at a time specified by the owner or operator and respondent has no control over the volume of work nor the time when it must be done. The volume of work and the hours of employment are not uniform but fluctuate widely from week to week [R. 306, 309, 226]. The employees who perform the servites and operate the tools are trained men and additional skilled labor is not obtainable in busy periods. In slack periods the men are retained on the payroll. There was no normal or regular number of hours worked in a workweek as the hours worked fluctuated for each employee from a few to a number in excess of 100. While long hours are shown on the payroll records in some weeks for some employees, this does not mean that such employees were working in the usually accepted meaning of that term. Many of the hours recorded as hours worked consisted of waiting on the well location (from 2 to 16 hours) while the drilling crew runs the casing; waiting while perforation work is done by another company and waiting (for 24 hours or more) while the testing tool is in the well hole. The employee may spend such waiting time in resting, or even in engaging in recreational pursuits nearby provided he leaves word where he can be reached by the well owner or operator when needed. In sample periods, 6,208 hours were spent by the employees waiting on location as compared with 11,142 hours spent in running the job [Exhibit "41," R. 354]. The hours designated as running the job include waiting time on location after the job has commenced [R. 430, 438]. Other idle time recorded as hours worked is time spent at the camp or base when there is nothing to do [R. 295, 436, 452].

In July 1942 each field employee and the Company executed an employment contract in letter form, [R. 63]. These were superseded in August 1942 by formal written contracts executed by each field employee [R. 64], the pertinent part of which has been quoted hereinabove.

The amount of the weekly guarantee was sufficient to pay for 40 hours at the regular hourly rate and for 44 additional hours at one and one-half times the regular rate. The Company could not have afforded to pay the amount of the weekly guarantee as weekly salaries compensating for straight time only [R. 470]. The amounts of the weekly guarantees were not the same as the salaries previously paid and in many instances were substantially higher [R. 315, 316].

During the period from July 1942 to January 1944, the field employees were paid semi-monthly since respondent's records and reports were based on a calendar month, calendar quarter or calendar year and it enabled the employees to meet installments on homes, automobiles and insurance. To save computation, the weekly guarantee was translated into an equivalent monthly guarantee by a method of computation approved by the Administrator [Interpretative Bulletin No. 4, Par. 10, R. 235, 376]. The total hours worked in a workweek were shown on the payroll records and the number of overtime hours worked was readily ascertainable by merely subtracting 40 from the total hours worked. By pre-trial stipulation all issues with respect to record keeping were eliminated from the case [R. 66-67]. Since January, 1944 the field employees were paid bi-weekly [R. 64; 330] and payroll records were kept on a weekly basis, showing all items in detail [R. 120].

There was a total of 4,284 man weeks during the period here involved [R. 226]. Overtime hours were worked in 86% of the total workweeks [R. 381]. In 20% of the total workweeks the hours worked exceeded those paid for by the weekly guarantee [R. 384] and such excess hours were compensated at a rate of one and one-half times the hourly rate specified in the employment contract [R. 333]. Such manner of compensating respondent's employees was entirely different than the method of payment prior to the time of enactment of the Fair Labor Standards Act. In the few instances where an employee did not work a full workweek he was compensated at the agreed hourly rate for the first 40 hours and at a rate not less than one and one-half times such hourly rate for all overtime hours, or a prorata amount of the weekly guarantee, whichever was the greater [R. 185; 186; 341-350; 351; 379; 380].

Incomplete and disconnected statements from instructions to respondent superintendents are contained in the petition (pp. 4 and 5) which fail to give their true meaning when thus detached from their context. The instructions attempted to explain the use of the monthly equivalent of the weekly guarantees on the semi-monthly payrolls. The instructions expressly direct that the employees shall be compensated for the first 40 hours at the agreed hourly rate and for all overtime hours at a rate at least one and one-half times the regular hourly rate, or the amount of the weekly guarantee, whichever is the greater [R. 78].

No Good Grounds for Certiorari Are Shown by the Petition.

We will consider the three grounds upon which the petition is based in the order set forth in the petition.

1. The decision of the Circuit Court of Appeals in this case is not in conflict with the decisions of this Court in *Walling v. Helmerich & Payne, Inc.*, 323 U. S. 37, *Walling v. Youngerman-Reynolds Hardwood Company*, 325 U. S. 419, or *Walling v. Harnischfeger Corporation*, 325 U. S. 427. The employment contract here involved is entirely different from the contracts and methods of payments involved in the three cases last cited. The employment contract in this case is the same type and almost identical with the employment contract which this Court held valid in *Walling v. A. H. Belo Corporation*, 316 U. S. 624. In the *Belo* case the contract was contained in a letter from the employer to the employee which stated:

> ". . . we advise that from and after October 24, 1938, your basic rate of pay will be . . . 67 . . . cents per hour for the first forty-four hours each week and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40 . . ." (316 U. S. 628.)

A comparison of the Belo contract with the contract here involved demonstrates their practical identity.

In its written opinion the District Court, the Honorable J. F. T. O'Connor, Judge Presiding, said:

> "A careful examination of the contract between the defendant and its employees brings this action

within the ruling of the Supreme Court of the United States in Re Walling v. A. H. Belo Corporation, 316 U. S. 624, 62 S. Ct. 1223, 86 L. Ed. 1716." [R. 28; 57 Fed. Supp. 408, 410.]

The Circuit Court of Appeals for the Ninth Circuit in affirming the judgment below said:

> "Faced with a wage agreement not substantially differing from the one before us, the Supreme Court, in Walling v. A. H. Belo Corporation, *supra*, reached a conclusion with which the decision below conforms. The Administrator argues that in subsequent decisions the Belo case has been whittled down to a very narrow compass. However, in these later cases the Court has carefully and consistently refrained from overruling the earlier decision or denying its continued authority. Counsel for the Administrator has not been able to point out any substantial distinction between the Belo case and the present, nor have we been able to discern any difference in principle." [R. 481; 152 F. (2d) 622, 623.]

The *Helmerich & Payne* case involved the split-day plan. In each shift or tour, one-half of the hours worked were paid for at a specified rate and the other one-half of the hours worked were paid for at one and one-half times such rate. Overtime compensation was computed on the lower of the two rates, notwithstanding that the compensation paid for the first 40 hours was at a higher rate. By reason of these facts this Court held the contract invalid. It was to this state of facts that the Court directed its statements from which petitioner here makes partial and disconnected quotations. The contract involved in the *Helmerich & Payne* case differed from the type of contract involved in the *Belo* case and here involved. This Court

expressly distinguished the case from the *Belo* case, stating:

> "Nothing in this Court's decision in Walling v. A. H. Belo Corp., 316 U. S. 624, 86 L. Ed. 1716, 62 S. Ct. 1223, *supra*, sanctions the use of the split-day plan."

The *Youngerman-Reynolds* and *Harnischfeger* cases were considered together by this Court.

In the *Youngerman-Reynolds* case, notwithstanding a specified hourly rate, the employees actually were compensated for regular and overtime hours on a piece-rate basis which was higher than the specified hourly rate. As stated by this Court in that case, "It is thus apparent that the guaranteed piece rates would yield greater returns on an hourly basis for both regular and overtime work and that they would actually be the rates paid." In the *Harnischfeger* case the contract provided for a basic hourly rate, plus an incentive bonus or piecework earnings. The incentive bonus was paid for work during the first 40 hours of the workweek and this Court properly held that such incentive bonus was part of the regular rate of pay upon which the overtime rate must be computed. In discussing the *Youngerman-Reynolds* case, this Court expressly distinguished the type of employment contract there involved from that involved in the *Belo* case, stating:

> "This Court's decision in Walling v. A. H. Belo Corp., 316 U. S. 624, 86 L. Ed. 716, 62 S. Ct. 1223, lends no support to respondent's position."

Petitioner asserts that the employment contracts here involved enabled respondent to avoid paying increased labor costs for the first 44 hours of overtime worked (p.

9). This statement can take semblance of verity only if it is first assumed (contrary to the fact) that there was no agreement for employment at an hourly rate and that the weekly guarantee paid for straight time only. The fact is that the employee and respondent agreed that the weekly guarantee paid for the first 40 hours at the agreed regular hourly rate and for 44 overtime hours at a rate of one and one-half times the agreed regular hourly rate. The employment contract further provides for the payment of compensation at the rate of one and one-half times the agreed regular hourly rate for every hour worked in excess of those paid for by the guarantee. Compensation of the employee in accordance with the employment contract results in at least a 50% increase of labor costs for each overtime hour worked. This is true whether the overtime hours are those within the number paid for by the weekly guarantee or are hours in excess of such number. In a substantial number of workweeks—one out of every five—hours were worked in excess of those paid for by the guarantee [R. 384]. For every such hour the employee received compensation in addition to his weekly guarantee at a rate of one and one-half times the hourly rate specified in the employment contract [R. 333]. The payment of such compensation, in addition to the weekly guarantee, at the rate of one and one-half times the hourly rate specified in the contract, is consistent only with the premise that the agreed hourly rate was the regular rate at which the employee was employed. It would be inconsistent with petitioner's contention that the guarantee was a weekly salary which paid for all hours worked at straight time, since under the irregular workweek plan the additional compensation would be only at one-half times the hourly rate. In the instant case the number of work-

weeks in which compensation was paid in addition to the weekly guarantee is substantially greater than existed in the *Belo* case. In the *Belo* case only 71 weeks out of a total of approximately 1100 weeks, or 6.4% of the total workweeks, were weeks in which hours were worked in excess of those paid for by the weekly guarantee [*Belo*, R. 194-337]. In the instant case 856 weeks out of a total of 4,284 weeks, or 20% of the total workweeks, were weeks in which the hours worked exceeded those paid for by the guarantee [R. 384]. All of such hours were paid for at one and one-half times the agreed hourly rate [R. 333].

Petitioner asserts that an "84-hour week bore no relation to the regular or usual number of hours worked by the employees under consideration" (p. 31). Here the employees worked an irregular workweek and there was not and could not be a regular or usual number of hours worked. The fluctuation in hours worked in a week ranged from a few to well over 100 [R. 226]. The weekly guarantee provided in the contracts in the *Belo* case paid for 54½ hours but that was not the regular or usual number of hours worked. The usual workweek for the Belo employees was around 48 hours for the men and 44 hours for women [Belo, R. 63-64].

Petitioner's main argument is directed to the fact that the weekly guarantee was paid in weeks in which 40 hours or less were worked. Respondent was obligated to make such payments by the terms of its contract. The same provision, in identical language, was contained in the employment agreements of the *A. H. Belo Corporation* (316 U. S. at 628). The evidence in the *Belo* case showed that the weekly guarantee was paid in workweeks in which the

number of hours worked were 40 or less. In the *Belo* case the number of weeks in which the weekly guarantee was paid, where no overtime hours were worked, was 20% of the total workweeks, while here it is only about 14% [R. 381]. Petitioner concedes that the same situation existed in the *Belo* case (p. 13, n. 3) but claims that the significance was not fully appreciated and that the Court's attention was not directed to it. We believe that without having its attention called to it this Court would realize that under the terms of the contract the *Belo Corporation* was obligated to pay the weekly guarantee in weeks in which 40 hours or less were worked. In both the opening brief and the closing brief of the Administrator in the Circuit Court of Appeals for the Fifth Circuit[1] this fact was repeatedly brought to the attention of the Court and used as the basis of argument. Reference to this fact was also made in the Administrator's brief in this Court. In the *Belo* case the opinion of the Circuit Court of Appeals was before this Court and reference was there made to the fact (121 F. (2d) at 210, n. 6). Furthermore, in the *Belo* case the Administrator filed a petition for rehearing in this Court (317 U. S. 706) and thus was afforded an opportunity to enlighten this Court on the point.

Petitioner's first ground for the issuance of a writ of *certiorari* is based upon incomplete and detached excerpts from general language in the opinions of this Court in the *Helmerich & Payne*, *Youngerman-Reynolds* and *Harnischfeger* cases, disregarding that such language was

[1]The transcript and the Administrator's briefs in the Circuit Court of Appeals and in this Court in the *Belo* case are a part of the record in this case [R. 321; 323]. They are not reproduced in the printed transcript but were considered by the Circuit Court of Appeals in their original form [R. 479].

directed to entirely different types of employment contracts and which this court expressly recognized as being different. The petitioner has failed to heed the admonition of this Court that "words of our opinions are to be read in the light of the facts of the case under discussion" and that "General expressions transposed to other facts are often misleading" (*Armour & Co. v. Wantock*, 323 U. S. 126; *Bramwell v. United States Fidelity & Guaranty Co.*, 269 U. S. 483).

2. The decision in this case is not in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Walling v. Uhlmann Grain Co.*, 151 Fed. (2d) 381. The petition states that the wage plan involved in the *Uhlmann* case is "virtually the same as the one here in question" but this is not true. In the *Uhlmann* case there was no employment contract signed by the employees. There was merely a notice that the employees would be on call for 60 hours in each workweek. There was no guarantee. The notice merely stated "This rate of pay, including overtime, if any, should equal or exceed the compensation you have received from us in the past" (151 F. (2d) 1382, n. 1). The important distinction between the *Uhlmann* case and this case is that the wage plan in the *Uhlmann* case was never put into effect. When the employees worked in excess of 60 hours in a workweek, they received no compensation in addition to their weekly pay. As stated by the Circuit Court of Appeals in the *Uhlmann* case ". . . the amount of compensation received by an employee was the same, irrespective of the number of hours worked. Overtime work resulted in no additional compensation." (151 F. (2d) 383.) Here each employee executed a formal written contract, there

was a weekly guarantee and the wage plan actually was put into effect and strictly adhered to. In each of the above-mentioned matters the instant case is like and the *Uldmann* case is unlike the factual situation in the *Belo* case.

The decision of the Circuit Court of Appeals for the Ninth Circuit in *Walling v. Alaska Pacific Consolidated Mining Co.*, 152 F. (2d) 812, involved a different type of contract and factual situation than here involved and affords no ground for granting *certiorari* in this case. That case involved a "split day" plan like that involved in the *Helmerich & Payne* case which is different than the wage plan here involved and different than the wage plan involved in the *Belo* case. The *Alaska Pacific* case was decided by the Circuit Court of Appeals for the Ninth Circuit ten days prior to its decision in the instant case. The two decisions show the distinction between the wage plan here involved and the split-day plans involved in the *Alaska Pacific* and *Helmerich & Payne* cases.

3. As a final ground for granting *certiorari* the petition states that for a period after the decision of this Court in the *Belo* case, the District Courts "tended to uphold" wage plans "which superficially" resembled the *Belo* contract but actually were different. The Administrator concedes that "This development was arrested by the later decisions of this Court" (p. 17). All of the cases cited by petitioner under this point involved wage plans substantially different than the wage plan here involved and the wage plan involved in the *Belo* case. The wage plan here involved is the same as that involved in the *Belo* case and its validity settled by this Court's decision in that case. This case presents no vehicle for an exposition by

this Court as to what other different wage plans are valid or invalid. To attempt to do so would result in mere *dictum*. If the Administrator desires a decision of this Court that a particular different plan is invalid such decision should be made in a case involving such different plan.

The writ of *certiorari* should not issue to review the evidence or the inferences drawn from it. The District Court found that during the period involved, each employee was paid in accordance with his employment contract; that he received for every overtime hour compensation at a rate at least one and one-half times the regular hourly rate specified in his contract. The Court found that for every hour worked in a work-week in excess of those paid for by the guarantee the employee received compensation in addition to his guarantee at the rate of one and a half times the agreed regular hourly rate [R. 35]. Both Courts found each of the contracts was actually a *bona fide* contract of employment and was intended to and did really fix the regular rate at which each employee was employed [R. 34; 481]. Such findings based upon the writing and extrinsic evidence are findings of fact (*Barreda v. Silsbee*, 62 U. S. 146; *S. S. Kresge Co. v. Sears*, 87 F. (2d) 138, 140, cert. den. 300 U. S. 670). The petitioner here asks this Court to review the evidence and the possible different inferences deducible therefrom. A writ of *certiorari* should not issue to review the evidence, particularly where, as here, the findings of fact are concurred in by both lower courts.

General Talking Picture Corp. v. Western Electric Co., 304 U. S. 175, 178;

United States v. McGowan, 290 U. S. 592;

United States v. Commercial Credit Company, 286 U. S. 63, 67;

Page v. Arkansas Nat. Gas Corp., 286 U. S. 269, 271;

Allen v. Trust Company of Georgia (U. S.), 90 L. Ed. Adv. Ops. 305 at 308, decided January 28, 1946.

In the case last cited the Court said:

> "Here two courts have resolved that question of fact in favor of respondents. . . . Those findings, being concurrent findings of the two lower courts, will be accepted here without reexamination of the evidence. See United States v. O'Donnell, 303 U. S. 501, 508, 82 L. Ed. 980, 984, 58 S. Ct. 708, and cases cited."

The demarcation between valid and invalid wage plans under the Fair Labor Standards Act of 1938 is now fairly well settled by the decision of this Court in the *Belo* case and in the later decisions of this Court in the *Helmerich & Payne*, the *Harnischfeger* and the *Youngerman-Hardwood Company* cases. A change of decision at this time would result in uncertainty, confusion and extensive litigation. The employment contracts here involved were negotiated upon the faith of and in reliance upon the decision of this Court in the *Belo* case [R. 401] and undoubtedly other like contracts were executed in reliance upon that decision. It would be most inequitable for a change in decision to operate retroactively and subject one of the parties to multiple litigation and extensive liability. Even if it were of questionable soundness the decision of this Court in the *Belo* case should be adhered to

in order to avoid confusion and unfortunate practical results from a change.

Helvering v. Griffiths, 318 U. S. 371, 403;
Davis v. Dept. of Labor of Washington, 317 U. S. 249, 255;
U. S. v. Flannery, 268 U. S. 98, 105.

The decision of this Court in the *Belo* case is sound and the type of employment contract involved in that case and here involved is not violative of the provisions of the Fair Labor Standards Act of 1938. As stated by this Court in the *Belo* case "the guaranty contract in this case carries out the intention of the Congress. It specifies a basic hourly rate of pay and not less than time and a half that rate for every hour of overtime work beyond the maximum hours fixed by the Act," and that "Congress has said nothing to prevent this desirable objective" of "the security of a regular weekly income." These statements are as true today as on the date of their pronouncement.

That the decision of this Court in the *Belo* case accords with the intention of the Congress in enacting the Fair Labor Standards Act of 1938 is evidenced by the fact that the Congress has acquiesced in such construction of the statute and has refrained from amending the Act so as to require a different result. There has been abundant opportunity for the Congress to give further expression to its will and it is well known that many bills have been introduced in the Congress to amend the Fair Labor Standards Act. No Amendment has been adopted which would require a different result than expressed in the decision of this Court in the *Belo* case. This Court's construction of the Act should be adhered to, leaving it to

the Congress to amend the law should it deem a change necessary or desirable.

Apex Hosiery Co. v. William Leader, 310 U. S. 469, 487;

Missouri v. Ross, 299 U. S. 72;

United States v. Elgin Joliet & Eastern R. Co., 298 U. S. 492, 500.

We believe that the record warrants the conclusion that this suit was instituted and the petition here was filed for the sole purpose of relitigating in this Court the question of law involved and settled by this Court in the *Belo* case. At the trial in the District Court, petitioner's attorney stated "We say if he has the guarantee he simply is not employed at the hourly rate" [R. 212]. The petition here states at page 17 ". . . that the *Belo* type of contract by its very nature tends to defeat the purpose of Section 7," and at page 18 "These aspects of the *Belo* contract seem inconsistent in principle with this Court's subsequent opinions." The various grounds upon which the Administrator attacks the wage plan in this case existed also in the *Belo* case. Substantially the same arguments here made by the Administrator were made in the *Belo* case and determined by this Court in its decision in that case. The primary arguments contained in the petition for the granting of *certiorari* are to the effect that the decision of this Court in the *Belo* case is erroneous. A writ of *certiorari* should be allowed only when an important question of Federal law "has not been . . . settled by this Court" [Rule 38 (5) (b)]. The writ should be denied where this Court already has settled the question of law. The decision of this Court in the *Belo* case was made in 1942 and has been recognized as established law in sub-

sequent decisions of this Court involving other wage plans. While the doctrine of *stare decisis* is not rigid, it is an important principle of our jurisprudence and social policy. Our system of law is based upon the formulation of and adherence to principles that will impart stability to and predictability of judicial discretion.

We respectfully submit that no good ground has been shown for the issuance of a writ of *certiorari* in this case and that the petition therefor should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1946.

No. 74

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

H. A. ROSSON, OIL WELL CEMENTING COMPANY, a corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF RESPONDENT.

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IN THE

Supreme Court of the United States

October Term, 1946.

No. 74

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

HALLIBURTON OIL WELL CEMENTING COMPANY, a corporation,

Respondent.

BRIEF OF RESPONDENT.

Opinions Below.

The opinion of the District Court [R. 24-29] is reported at 57 F. Supp. 408. The majority and dissenting opinions of the Circuit Court of Appeals [R. 480-483] are reported at 153 F. (2d) 622.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on December 29, 1945 [R. 484]. The petition for a writ of certiorari was filed on March 29, 1946, and granted on May 13, 1946. The jurisdiction of this Court is based upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Respondent and each subject employee negotiated and executed a written employment contract, of which the following is typical:

> "Employer agrees to employ Employee as a cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $63.46 for each workweek." [R. 33, 481.]

Each employee during the period involved was compensated in accordance with the terms of the employment contract.

By a pre-trial stipulation [R. 67] and order [R. 23], the issue for trial was limited to the following question, which is the issue here:

> "During the period here involved did defendant's field employees receive compensation for their hours of work in excess of forty hours in a week at rates not less than one and one-half times the regular rates at which they were employed."

The question is determined by whether or not the contract hourly rate is the "regular rate" upon which overtime compensation is to be computed.

Statute Involved.

The pertinent provisions of the Fair Labor Standards Act of 1938 (c. 676, 52 Stat. 1060, 29 U. S .C., sec. 201) are as follows:

"Sec. 7(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

* * * * * * * *

(3) for a workweek longer than forty hours after the expiration of the second year from * * * (the effective) date (of this section), unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed."

Statement.

Respondent has its main place of business at Duncan, Oklahoma, and is engaged in the manufacture and sale of oil well supplies [R. 12] and in the business of oil well servicing in the oil producing states, including California. It owns special tools and equipment for various types of oil well cementing and for testing and surveying oil wells and rents such tools and equipment to persons engaged in drilling or operating oil wells and furnishes skilled employees to operate the same [R. 62-63].

There are approximately 2100 employees of respondent corporation [R. 329]. Prior to the enactment of the Fair Labor Standards Act of 1938, respondent's shop em-

ployees were paid on an hourly rate basis while its office employees and field employees were paid on a monthly salary basis [R. 13]. Soon after the effective date of the Act respondent limited the number of hours per week for its office and shop employees to the maximum number of hours prescribed by the Act [R. 13]. The salaries of field employees were adjusted to an hourly rate of pay with compensation for overtime hours at not less than one and one-half times the regular hourly rate, with a weekly guaranty similar to the plan here under consideration [R. 14]. Prior to March 1942, representatives of the Wage and Hour Division of the Department of Labor objected to the guaranty feature of the plan of compensation of field employees, notwithstanding the decision of the Circuit Court of Appeals for the Fifth Circuit in the *Belo* case [R. 15 and 17]. In order to avoid litigation and for the purpose of complying with the Act as interpreted by the Administrator, and, effective March 1, 1942, respondent adopted for the field employees the Irregular Workweek Plan set forth in Section 12 of Interpretative Bulletin No. 4 [R. 17]. Under this plan the salary was less than the amount of the guaranty under the previous contract plan [R. 316]. After the decision of this Court in the *Belo* case, and effective July 1, 1942, respondent negotiated and entered into written employment contracts with each of the field employees working a fluctuating number of hours per week. The amount of the weekly guaranty of certain employees was increased to the amount that had been guaranteed prior to the adoption of the Irregular Workweek Plan [R. 316]. There were approximately 900 field employees who executed the written employment contracts [R. 329].

This action was confined to employees employed in California and carried on respondent's "contract" payroll subsequent to July 1, 1942 [R. 21, 63]. In March 1944 there were 66 such employees in California. Such employees consist of cementers, testers, electric survey operators, drivers and field mechanics [R. 63]. The work of these employees is not at a fixed establishment but at the oil wells in the field. These employees operate from camps located 35 or more miles from the scene of their work [R. 424]. Respondent has no control over the volume of work nor the time when it must be done. The oil well must be cemented, tested or surveyed at the time specified by the well owner or operator. The volume of work is not uniform but fluctuates widely from week to week [R. 306-309; 226], being influenced by the fluctuating oil well drilling activity in the locality. The employees who perform the services and operate the tools are trained men and additional skilled men are not obtainable in busy periods. In slack periods these men are retained on the payroll as otherwise they would be unavailable when needed. The hours worked by the employees fluctuate widely from week to week. Several consecutive days may pass when an employee has no work to do [R. 309] and the total hours worked by him during the week may be few or none. In other weeks the hours shown on the payroll records as hours worked may exceed 100. There was no normal or regular number of hours worked in a workweek. The wide variation in the number of hours worked per week by the field employees is illustrated by Defendant's Exhibit "J" [R. 366-367; 365], Plaintiff's Exhibit No. 3 [R. 160, *et seq.*], and No. 3A [R. 181]; and Exhibit No. 5 [R. 226].

Long hours are shown on the payroll records for some weeks for some employees. This does not mean that the employees worked for the stated number of hours in the usually accepted meaning of that term. Many of the hours recorded as hours worked were spent by the employee waiting or resting or following his own pursuits. Such idle time includes waiting on the well location (2 to 16 hours) while the drilling crew runs the casing, waiting (6 to 8 hours) while the cement is setting, waiting while perforation work is done by another company and waiting (for 24 hours or more) while the testing tool is in the well hole [R. 429]. The employee may spend such waiting time in resting or even engaging in recreational pursuits at a nearby town, provided he leaves word where he can be reached by the well owner or operator. Such waiting time is recorded on the payroll records as hours worked [R. 291-293; 425-426; 428-433; 449-452]. As shown by Defendant's Exhibit "H" [R. 354], in sample periods 6,298 hours were spent by the employees waiting on location as compared with 11,142 hours spent in running of the job. This comparison is more significant than appears on its face since the hours designated as running the job include the waiting time on location after the job has been commenced [R. 430; 438]. Other idle time recorded as hours worked is time spent at the camp or base when there is nothing to do [R. 295, 436, 452].

In July 1942, respondent and each of the field employees executed a written employment contract in letter form [R. 63], a typical example of which is found in the record at page 547. In the following month respondent and each field employee negotiated and executed a formal writ-

ten employment contract [R. 64], a typical example of the pertinent provisions of which is as follows:

> "Now, Therefore, the Employer and Employee mutually covenant and agree as follows:
>
> "Employer agrees to employ Employee as a cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40 hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $63.46 for each workweek." [R. 33, 481.]

Pursuant to the provisions of the employment contract [R. 464] increases in the hourly rate of pay and in the minimum guaranty were made by written notice, of which the following is typical:

> "Since the date of your Employment Contract, signed October 16, 1942 the provisions relating to compensation have been changed as follows:
>
> "The regular basic rate per hour has been increased from 54 cents to 59 cents. The sum guaranteed for each workweek has been increased from $57.69 to 63.46.
>
> "The guaranteed weekly minimum of $63.46 is equivalent to a monthly salary of $275." [R. 467, 447, 121.]

All of the agreed basic hourly rates were equal to or were in excess of the minimum compensation required by Section 6 of the Act or order of the Administrator. The weekly guaranty ranged from $42.69 to $65.77, which was equivalent to a monthly guaranty ranging from $185 to

$285 [R. 377-378]. The weekly guaranty paid for the first 40 hours in a workweek at the basic hourly rate specified in the contract and an additional 44 hours at a rate of at least one and one-half times the specified regular hourly rate [R. 80]. While in some instances the weekly guaranty did not exceed the equivalent of the monthly salaries previously paid, others did exceed such amounts. Some drivers previously received under the irregular workweek plan a monthly salary of $155 but the employment contracts provided for a weekly guaranty equivalent to a monthly guaranty of $165 [R. 315]. The weekly guaranty of field mechanics was approximately 9% greater than the salaries previously paid under the irregular workweek plan [R. 316]. Respondent could not have afforded to pay the amount of the weekly guaranty as a weekly salary compensating for straight time only [R. 470].

During the entire period involved the field employees were compensated in accordance with the respective employment contracts [R. 35]. For all hours worked in a workweek each employee received a sum not less than the specified basic hourly rate for the first 40 hours and for all hours in excess of 40 at a rate at least one and one-half times such specified basic hourly rate.[1] In all instances where an employee worked more hours in a workweek than were paid for by the weekly guaranty he was paid a sum in addition to the weekly guaranty. All hours worked in excess of those paid for by the guar-

[1] In three instances where less than a full week was worked the employee received slightly less than his proper compensation. This was due to an unintentional and inadvertent error in calculation [R. 339] and the Court so found [R. 36]. Hereafter these exceptions will be ignored.

anty were compensated at a rate of one and one-half times the basic hourly rate specified in the contract [R. 333, 148, 35]. The statements in the Administrator's brief (p. 5) that "the field employees continued to receive monthly salaries in substantially the same manner as before" and that "the hourly rate specified in the contract was never used" are contrary to the record.

At the time the employment contracts were negotiated and at all times since respondent had first come into existence, all employees had been paid semi-monthly. It was considered advantageous both to respondent and to its employees to continue to pay the field employees semi-monthly notwithstanding that the written employment contracts provided for a weekly guaranty. The respondent's financial records and statements were based on a calendar month, calendar quarter or calendar year. Deductions for group insurance and orders for grocery bills and installment payments were on a monthly or semi-monthly basis [R. 330]. Therefore, respondent, until January 1944, continued to pay the field employees semi-monthly.[2]

The payroll records were made up in the various field offices and in very few instances were there trained accountants to prepare the payroll records. Respondent endeavored to devise a simple system and to eliminate computations as much as possible. The weekly guaranty was translated into an equivalent monthly guaranty by multiplying the amount by fifty-two and dividing by twelve

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[2] The Administrator expressly has declared that the pay period need not coincide with the workweek and that there is no objection if the pay period is semi-monthly. Interpretative Bulletin No. 4, Par. 29 [R. 240].

[R. 78].[3] To aid the clerical force in making up the payroll records respondent sent to its field offices a chart [R. 73] which listed the hourly rate specified in the contract for the first forty hours in a workweek, the overtime hourly rate, the weekly guaranty and the monthly equivalent to the weekly guaranty. In some instances the overtime hourly rate shown on the chart was slightly more than one and one-half times the basic regular hourly rate. This was due to the fact that for a ready computation the monthly equivalent of the weekly guaranty was shown in round figures and in some instances paid for overtime hours at a rate slightly in excess of one and one-half times the straight-time hourly rate. The chart was merely for the convenience of the clerical force and was no part of the employment contract. All hours worked by each employee in a workweek were shown on the semi-monthly payroll reports. No space was provided for showing separately the number of hours worked in excess of 40 unless the total hours worked exceeded 84. Since the weekly guaranty paid for the first 40 hours worked at the regular rate and for an additional 44 hours at a rate of one and one-half times the regular rate and since under the employment contract respondent was obligated to pay at least the amount of the weekly guaranty, no computation was required unless the hours worked in a workweek exceeded 84. The number of overtime hours worked in a workweek was readily ascertainable by subtracting 40 from the total hours worked. The forms of payroll reports and the instructions show

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[3]This method of computation is on the principle advocated by the Administrator for the irregular workweek plan. Interpretative Bulletin No. 4, Par. 10 [R. 235, 376].

an attempt to attain simplification and to save clerical work. The instructions are indubitably clear that all field employees would receive the amount of the weekly guaranty or the amount computed on the contract hourly rate, whichever was the greater [R. 78, 120]. By pre-trial stipulation [R. 66] and order thereon [R. 23], all charges relating to record-keeping were eliminated from the case. When respondent learned that the Wage and Hour Division desired that additional information be shown on the payroll records, respondent on January 15, 1944, adopted a bi-weekly payroll period [R. 386] and since that time the field employees have received their compensation bi-weekly [R. 64, 330].

There was shown on the bi-weekly payroll form the regular hourly rate, the overtime rate, the regular hours worked, the overtime hours worked, the regular rate earnings, the overtime rate earnings and where less than 84 hours were worked, as a further "break down," the difference between the amount of the weekly guaranty and the amount computed on an hourly basis. This was done, however, merely because respondent understood that the attorney for the Wage and Hour Division desired the payroll report to show a complete detailed statement [R. 386].

By the provisions of the employment agreement respondent was obligated to pay the amount of the weekly guaranty, irrespective of the number of hours worked. Respondent performed this obligation and paid at least this sum for every full workweek whether the number of hours worked was more or less than 40. During the period here involved, in only 14% of the total man workweeks did employees fail to work more than 40 hours in the workweek [R. 381].

In a few instances [R. 335] an employee did not work a full workweek. This was occasioned by the employment terminating or commencing during the pay period [R. 336] or by reason of a transfer to another Division. Such terminations were largely due to the employee entering the armed services [R. 469]. In such instances respondent compensated the employee for the partial workweek at the hourly rate or a *pro rata* amount of the weekly guaranty, whichever was the greater [R. 185-186, 341-350, 351, 379, 380] as it believed it was obligated to do [R. 380].

The employees here involved received annual vacations at full pay [R. 385, 31] and received full pay during periods of illness [R. 298-299, 452, 31] and were permitted absences to attend to personal affairs without deduction from pay [R. 299, 31]. Group insurance was available [R. 384, 32]. Except for entering the armed services the employee turnover was very small [R. 469].

The District Court, the Honorable J. F. T. O'Connor, presiding, among other things, expressly found:

> "Each of said contracts was actually a *bona fide* contract of employment and was intended to and did really fix the regular rate at which each of the respective field employees was employed. Defendant agreed to employ and did employ, and each field employee agreed to be employed and was employed, at the hourly rate specified as the basic regular hourly rate in the written contract executed by the respective employees and defendant and in instances where the hourly rate was increased then at such increased hourly rate." [R. 34.]

"Continuously from and since July 1, 1942, each field employee was compensated and paid by defendant in accordance with the terms of the written contract executed by said employee with defendant and where the basic hourly rate of pay and weekly guarantee were increased, then and thereafter in accordance with the contract as so modified. For each hour worked in excess of forty in each workweek from and since July 1, 1942, each field employee received from defendant as compensation an amount equal to or in excess of an amount one and one-half times the hourly rate specified in the written contract of employment executed by such employee with defendant and where the hourly rate was increased, then an amount at least one and one-half times the increased hourly rate. Continuously from and since July 1, 1942, each field employee received for all hours worked in each workweek a sum of money not less than the aggregate of the product of the number of forty hours or less and the hourly rate specified in his contract, plus the product of the number of hours in excess of forty and an amount one and one-half times said specified hourly rate." [R. 35-36.]

"Defendant has found by actual experience and the court finds that the plan of compensating defendant's field employees as set forth in the written contracts between defendant and said field employees was and is better adapted to defendant's field employees than the irregular workweek plan recommended by the Administrator and that the plan set forth in said contracts was preferred by the majority of defendant's field employees." [R. 40-41.]

Neither in the Circuit Court of Appeals nor here has petitioner made any specification that the findings above quoted are not supported by the evidence.

Summary of Argument.

The employees here involved were compensated for overtime hours at rates not less than one and one-half times the regular rates at which they were employed. The employment contract provided for an agreed hourly rate of pay for the first 40 hours worked in a workweek and not less than one and one-half times such agreed hourly rate of pay for all times over 40 hours in any workweek. The agreed regular rate is not overridden by the provision for a minimum guaranty which includes, and was intended to include, compensation at not less than the overtime rate for overtime hours as well as compensation at the regular rate for the first 40 hours worked in a workweek. The employment contract here involved is substantially the same as the employment contract which this Court held valid and not violative of the Act in *Walling v. A. H. Belo Corporation,* 316 U. S. 624 and the decision in the *Belo* case controls this case. No substantial differences in practice exist to distinguish this case from the *Belo* case. Practically all of the matters upon which petitioner relies in an attempt to distinguish this case from the *Belo* case were also present in the *Belo* case. The agreed hourly rate specified in the employment contract was the regular rate at which the employee was employed. This is evidenced by the contract and the practices of the parties. Both lower courts concurred in the finding that the agreed hourly rate was the regular rate and such finding should not here be disturbed. The payment of

compensation in accordance with the employment contract does not violate the statutory purposes. For all hours worked in excess of 40 in a workweek, the employee receives not less than 150% of his regular hourly rate, whether such overtime hours are compensated by the weekly guaranty or by additional compensation. The Irregular Workweek Plan which petitioner asserts should here apply gives incentive to longer hours since both the regular rate and the overtime rate decrease with the increase of the number of hours worked. The cases relied upon by petitioner involved employment contracts entirely different than the one here involved. Such cases are clearly distinguishable from the *Belo* case and the distinction was expressly recognized by this Court. The decision of this Court in the *Belo* case should not be overruled. It complies with the Act and fulfills the intent of Congress. The decision in the *Belo* case has been recognized and relied upon as established law by the public and has been recognized as having continued authority by subsequent decisions of this Court. The decision of this Court in the *Belo* case should be adhered to in order to avoid uncertainty and unfortunate practical results from a change in decision and for the purpose of imparting stability to the interpretation of the Fair Labor Standards Act.

ARGUMENT.

I.

The Employees Were Compensated for Overtime Hours at Rates Not Less Than One and One-Half Times the Regular Rates at Which They Were Employed.

This case does not involve workweeks in which respondent's field employees worked 40 hours or less. It is limited to workweeks in which more than 40 hours were worked and the sole question involved is whether or not in such workweeks the employees were compensated for hours worked in excess of 40 at rates not less than one and one-half times the regular rates at which they were employed. The issue was expressly so limited in the District Court by stipulation of the parties [R. 67] and pre-trial order [R. 23].

Respondent and each of the employees here involved negotiated and executed a written employment contract whereby the employee was employed at an agreed hourly rate equal to or in excess of the statutory minimum for the first 40 hours worked in a workweek and not less than one and one-half times such agreed hourly rate for all hours worked in excess of 40, with a guaranty that the employee should receive for regular time and for such overtime as the necessities of the business might demand a sum not less than a specified amount for each workweek. It is undisputed that during the period here involved each of such employees was compensated in accordance with the terms of the employment contract.

Petitioner's argument in the most part is directed to the proposition that compensating an employee in accordance with such an employment contract, as a matter of law, necessarily violates the provisions of Section 7 of the Fair Labor Standards Act. This was his position in the District Court where petitioner's attorney stated, "We say if he has the guarantee he simply is not employed at the hourly rate" [R. 212]. Petitioner argues *de novo* the question of the validity of such employment contracts as if the question were without controlling precedent. The validity of such employment contracts is established by the decision of this Court in *Walling v. A. H. Belo Corp.*, 316 U. S. 624.

A. The Decision of This Court in the Belo Case Determines This Case.

In June, 1942, in the case of *Walling v. A. H. Belo Corp.*, 316 U. S. 624, this Court determined the validity of employment contracts practically identical with and to the same legal effect as the ones here involved. In that case the contracts were in letter form, the pertinent provisions of a typical one being as follows:

> ". . . we advise that from and after October 24, 1938, your basic rate of pay will be . . . 67 . . . cents per hour for the first forty-four hours each week and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40 . . . " (316 U. S. 628.)

Compare with the foregoing the pertinent provisions of a typical contract between respondent and its employees:

> "Employer agrees to employ Employee as a Cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over (40) hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $63.46 for each workweek." [R. 33, 481.]

In the *Belo* case this Court held that the employment contract and the payment of compensation in accordance with its terms was valid and not violative of the Act. This Court held that the agreed hourly rate specified in the employment contract was the regular rate at which the respective employees were employed and that compensating the employees for overtime hours pursuant to the provisions of the employment contract was not violative of Section 7 of the Act. In that case this Court said:

> "In its initial stage the question to which this dispute gives rise is a question of law, a question of interpretation of the statutory term 'regular rate.' But it is agreed that as a matter of law employer and employee may establish the 'regular rate' by contract. In the case before us such an effort has been made, and in the example given the regular rate has been specified as 67 cents an hour. The difficulty arises from the inclusion of the $40 guaranty. The problem is whether the intention of the parties

to set 67 cents an hour as the regular rate squares with their intention to guarantee a weekly income of $40. The Administrator's position is that these two objectives are inherently inconsistent and that the intention to fix the regular hourly rate at 67 cents is overriden by the intention to guarantee the $40 per week.

"We cannot agree." (316 U. S. 631.)

This Court further said:

"But the guaranty contract in this case carries out the intention of the Congress. It specifies a basic hourly rate of pay and not less than time and a half that rate for every hour of overtime worked beyond the maxmium hours fixed by the Act." (316 U. S. 634.) And further ". . . that is the agreement of the parties and it is within the letter, and the intention of the law." (316 U. S. 634.)

The petition by the Administrator for a rehearing was denied by this Court October 26, 1942 (317 U. S. 706).

Petitioner here urges that the agreed hourly rate in the employment contract and the fact that the guaranty is "compensation for overtime as well as basic pay" (316 U. S. 632), should be ignored; that the weekly guaranty should be held to be a weekly salary which pays for straight time only, and that the principles of *Overnight Motor Transportation Co. v. Missel*, 316 U. S. 572, should be applied (pp. 28-29). The *Missel* case was decided by this Court on the same day that it decided the *Belo* case and this Court expressly distinguished the type of contract involved in the *Belo* case, which is the type

here involved, from a contract merely for a weekly wage which was the type involved in the *Missel* case. In the *Missel* case this Court said:

> "It is true that the wage paid was sufficiently large to cover both base pay and fifty per cent additional for the hours actually worked over the statutory maximum without violating section six. But there was no contractual limit upon the hours which petitioner could have required respondent to work for the agreed wage, had he seen fit to do so, and no provision for additional pay in the event the hours worked required minimum compensation greater than the fixed wage . . . This contract differs from the one in Walling v. A. H. Belo Corp. decided today (316 U. S. 624, post 1716, 62 S. Ct. 1223), where the contract specified an hourly rate and not less than time and a half for overtime, with a guaranty of a fixed weekly sum, and required the employer to pay more than the weekly guaranty where the hours worked at the contract rate exceeded that sum." (316 U. S. at 581.)

To the same effect is *Warren-Bradshaw Drilling Co. v. Hall*, 317 U. S. 88, where this Court said:

> "Respondents were employed on the basis of an eight hour day and regularly worked seven days a week, receiving fixed wages ranging from $6.50 to $11 per day. There was no agreement providing for an hourly rate of pay or that the weekly salary included additional compensation for overtime hours." (317 U. S. at 93.)

The decision of this Court in the *Belo* case has not been overruled. In the recent cases of *Walling v. Helmerich & Payne*, 323 U. S. 37; *Walling v. Youngerman-Reynolds Hardwood Company*, and *Walling v. Harnisch-*

feger Corporation, 325 U. S. 419, the cases upon which petitioner here relies, this Court expressly distinguished the employment contracts there involved from the type of employment contract involved in the *Belo* case. As stated by the Circuit Court of Appeals for the Ninth Circuit in this case, "The Administrator argues that in subsequent decisions the *Belo* case has been whittled down to a very narrow compass. However, in these later cases the Court has carefully and consistently refrained from overruling the earlier decision or denying its continued authority." [R. 481; 152 F. (2d) 622, 624.]

In the main the petitioner's brief in this case is an attack upon the decision of this Court in the *Belo* case. It is an attempt on the part of petitioner to have this Court again consider the correctness of that decision. Practically all of the points and argument here made were presented in the *Belo* case. There was received in evidence in this case the transcript of the record in the *Belo* case [Ex. "D"; R. 321] and the Administrator's briefs in the Circuit Court of Appeals [Ex. "E" and "E-2"; R. 325] and the Administrator's briefs in this Court [Ex. "F-1" and "F-2"; R. 325, 326] filed in the *Belo* case. These documents were not reproduced in the printed transcript but by order of the Circuit Court of Appeals for the Ninth Circuit were considered by that Court in their original form [R. 479]. As contended here, the Administrator contended in the Circuit Court of Appeals in the *Belo* case that the agreed hourly rate was meaningless and that the contract in effect was for a weekly salary [Ex. "E-2," p. 45, *et seq.*]. The same contention was made in this Court [Ex. "F-1," p. 14, *et seq.*; see also 316 U. S. at 361]. As here, the Administrator contended in the *Belo* case that the hourly rates

provided in the employment contracts were fictitious [Ex. "E-2," p. 47, Ex. "F-1," p. 37]; that the contract enabled the employer to avoid paying real overtime wages for hours in excess of the first 40 hours worked in a work-week [Ex. "E-2," pp. 52, 63; Ex. "F-1," p. 31]; that the contract permitted overtime compensation to be computed on an "unrealistic rate" lower than the rate employee actually received [Ex. "E-2," pp. 32, 52, 55, 67]; that the contract permitted the employer to avoid the disadvantage of overtime, namely, an increase in the cost of labor [Ex. "E-2," pp. 27, 67]; and that the computation of overtime in accordance with the terms of the contract resulted in greater rate of pay for fewer hours and a less rate of pay the more hours were worked [Ex. "E-2," p. 64]. These points and arguments were considered by the appellate courts in the *Belo* case and answered by the decision of this Court affirming the judgment.

The contracts here involved, being the same as those under consideration in the *Belo* case, the decision of this Court in the *Belo* case is here applicable and controls the determination of th case at bar.

B. No Substantial Differences in Practice Exist to Distinguish This Case From the Belo Case.

Under point II of his brief (p. 29, *et seq.*) petitioner attempts to distinguish the facts in this case from those involved in the *Belo* case. That there is no substantial difference between the two cases is tacitly conceded by the statement "If the two cases are not considered distinguishable, however, we submit that the Belo decision should not be followed . . ." (p. 32). Practically all matters referred to under this point also existed in the *Belo* case.

Petitioner states, as a ground for distinguishing the instant case from the *Belo* case, that "respondent's employees received their weekly salaries in a substantial number of weeks in which they worked less than forty hours" (p. 31). What petitioner means is that in such weeks the employee received the amount of his weekly guaranty. By the terms of the employment contract respondent was obligated to pay to the employee not less than the amount of the stipulated weekly guaranty irrespective of the number of hours worked. In making such payment respondent did no more than what it was required to do under the employment contract. The same obligation was contained in the employment contract involved in the *Belo* case which established the validity of an employment contract containing such obligation. The contract being in compliance with the Act, performance of its terms could not constitute non-compliance. The record in the *Belo* case establishes that in that case the weekly guaranty was paid in workweeks in which the number of hours worked were forty or less and the fact was referred to and argued in the briefs of the Administrator, both in the Circuit Court of Appeals and in this Court. In his opening brief in the Circuit Court of Appeals [Ex. "E-2"] the Administrator stated:

> "Under this provision, therefore, the full salary is paid whether overtime is worked or not" (p. 21); "if no overtime is worked, the employee nevertheless receives his 'guaranteed' weekly wage" (p. 23); "The employees involved here are paid fixed weekly salaries, regardless of the number of hours worked each week. They receive the same salaries whether or not overtime is worked" (p. 46); "Of course if no overtime is worked, the employee nevertheless receives his full salary" (p. 54).

In his reply brief in the Circuit Court of Appeals [Ex. "E," p. 4], the Administrator stated:

> "Although appellee maintains that workweeks in which an employee received his guaranteed weekly wage, even though no overtime was worked were rare . . . an examination of the payroll transcriptions [R. 194-337] reveals the contrary. Out of approximately 1100 man workweeks about 212, or 20%, are workweeks in which the employees did not work in excess of the statutory maximum."

Reference to this fact was also made in the Administrator's brief in this Court [Exhibit "F-1," pp. 35 and 36]. In the *Belo* case this Court had before it the opinion of the Circuit Court of Appeals for the Fifth Circuit which was specifically referred to in the opinion of this Court (316 U. S. at 629). In the opinion of the Circuit Court of Appeals there was a quotation from the argument contained in the Administrator's brief which included the following:

> "On the facts of this case, it cannot be said that the fixed weekly salary included overtime compensation because as a matter of fact, the full salary was earned by the employee when no overtime was worked." (121 F. (2d) at 210, n. 6.)

In his brief here, petitioner concedes that the record in the *Belo* case discloses that the weekly guaranty was there paid in workweeks where less than the statutory maximum hours were worked but states,

> "However, the significance of these facts was not fully appreciated prior to this Court's decision, and, therefore, they were not emphasized when that case was under consideration" (p. 32, n. 18).

In view of the quoted excerpts from the Administrator's briefs in the *Belo* case, the explanation seems groundless. In view of the emphasis placed upon the fact in the Circuit Court of Appeals, any failure to emphasize them before this Court would indicate that the Administrator gave such facts little weight and abandoned the argument based upon them. Furthermore, the Administrator filed a petition for rehearing in this Court (317 U. S. 706) and thus had ample opportunity to enlighten this Court on the point. A mere reading of the form of contract in the *Belo* case would disclose that the employer was obligated to pay the weekly guaranty in workweeks in which 40 hours or less were worked and it is inconceivable, particularly in view of the record, that this Court was unaware that the employer actually did so. In the *Belo* case the number of man workweeks in which the weekly guaranty was paid where no overtime hours were worked was 20% of the total workweeks, while in the instant case it was only about 14% [R. 381]. It thus conclusively appears that this asserted ground for attempting to distinguish the instant case from the *Belo* case is without merit.

The payment of the weekly guaranty in workweeks where 40 hours or less are worked is not evidence that the actual rate at which the employees were employed was other than as set forth in the written contract. It is evidence of the performance of the written contract and therefore evidence that the written contract expressed the real agreement between the parties. This situation is not novel in the law. An analogous instance is a mining lease providing for payment of a specified royalty per ton of ore removed with a minimum guaranty. If the amount of ore mined at the specified royalty is less than the mini-

mum guaranty, the lessee nevertheless is obligated to pay the amount of the minimum guaranty. Such payment does not establish that the royalty is other than the agreed royalty specified in the lease. In subsequent periods one would not ascertain the royalty by dividing the minimum guaranty by the number of tons mined during the period when the minimum guaranty was paid. Where irregular hours are worked, each week is taken by itself without reference to other weeks. As stated by the Administrator,

> "It must be remembered that the Fair Labor Standards Act takes a single workweek as its standard and permits no averaging of hours over two or more weeks. For the purposes of the act each week stands alone." [Interpretative Bulletin No. 4, Par. 29, R. 240; see also *Overnight Transportation Co. v. Missel,* 316 U. S. at 580.]

Petitioner states that 84 hours of work paid for by the guaranty bore no relation "to the regular or usual number of hours worked by the employees" (p. 31). The employees here worked irregular and a fluctuating number of hours. There was no "regular" or "usual" number of hours worked by the employees here under consideration. The hours fluctuated too widely from week to week. Exhibit "J" [R. 366-367, 365] illustrates the wide fluctuation for an employee in consecutive workweeks. Thus for employee Alexander, during the three consecutive weeks between July 5 and July 25, 1942, the number of hours fluctuated from 28 to 81½, and during the three weeks from January 3 to January 23, 1943 they varied from 60 to 124, and from July 4 to July 24, 1943 they fluctuated from 17 to 118, and from January 2 to January 22, 1944 from 13 to 66. Under such circumstances there could be no "regular" or "usual" workweek.

The weekly guaranty in the *Belo* case paid for 54½ hours in a workweek. But 54½ hours was not the "regular" or "usual" workweek. As stated by the Administrator in the *Belo* case in his brief [Exhibit "E-1," p. 11], in the Circuit Court of Appeals, "the usual workweek for men was around 48 hours and women employees usually worked 44 hours a week [R. 63-64]." It thus appears that petitioner's second claimed ground for distinguishing the instant case from the *Belo* case is without merit.

Petitioner contends that here there was a fixed overtime rate and that therefore the theory of a fluctuating overtime rate in a workweek where 84 hours are worked is inapplicable (p. 32). This contention is without foundation. The agreement between respondent and its employees was that they should receive "not less than one and one-half times" the regularly hourly rate and there was no other agreement between them. Petitioner's contention is based upon the chart [R. 73] which listed the regular rate and overtime rate as a convenience in computing overtime compensation in workweeks where more than 84 hours were worked. The overtime rate shown on the chart was for use only when an employee worked more than 84 hours [R. 112] and had no use at all where the employee worked less than 84 hours in a workweek [R. 316]. Petitioner also refers to the bi-weekly payroll form adopted in January 1944. This form provided for detailed information, including the difference between compensation actually paid and an amount computed at the hourly rates. This was done, however, solely because respondent understood that the Wage and Hour Division desired the payroll form to show a complete detailed statement [R. 386] with which respondent endeavored to comply. During the major portion of the period here in-

volved, namely, from July 1, 1942 to January 16, 1944 no such "break down" appeared on any of the payroll records.

In the employment contracts here involved the weekly guaranties were higher, at least relatively, than were the weekly guaranties in the contracts involved in the *Belo* case. Here the weekly guaranties paid for the first 40 hours in the workweek at the contract hourly rate and for 44 additional hours at not less than one and one-half times the specified hourly rate. The number of hours worked by the employees here fluctuated much more widely than in the *Belo* case and the range of the number of hours worked was considerably greater. The hours worked in a workweek fluctuated from 0 to 159 [R. 226]. For example, with respect to a typical employee they fluctuated in periods of three consecutive workweeks from 28 to 81½, 60 to 124, 17 to 118, and from 13 to 66 [R. 366]. The high number of hours shown on the records was caused by the inclusion of many hours spent in resting or other pursuits while waiting on location [R. 429] or idle time at the base when there was nothing to do [R. 436]. The relatively higher guaranty was the adaptation of the *Belo* type contract to the unusual circumstances attending oil well servicing. As said by Mr. Justice Frankfurter in his concurring opinion in the *Youngerman-Reynolds* and *Harnischfeger* cases,

> "Nor does the Act bar an agreement establishing an hourly 'regular rate' that does not fall short of the statutory minimum even though it be complicated by a guaranteed weekly lump sum wage adapted to the circumstances of a particular employment, provided it is not a mere artifice unrelated to wage-earning actualities. Walling v. A. H. Belo Corporation, 316 U. S. 624" (325 U. S. at 433.)

The higher guaranty gave the employee here more security and enabled him to maintain a higher standard of living. As was said by this Court in the *Belo* case,

> "Many such employees value the security of a regular weekly income. They want to operate on a family budget to make commitments for payments on homes, automobiles and insurance. Congress has said nothing to prevent this desirable objective." (316 U. S. at 635.)

C. The Agreed Hourly Rate Specified in the Employment Contract Was the Regular Rate at Which the Employee Was Employed.

In his brief under the heading "the hourly rate specified in the contracts did not in fact control the compensation received by respondent's employees" (p. 13), petitioner advances various arguments endeavoring to show that the agreed hourly rate specified in the employment contract was not the regular rate at which the employee was employed. Practically all, if not all, of such arguments could have been advanced and actually were advanced in the *Belo* case and all of such arguments effectively were answered and determined by this Court's decision in that case.

Petitioner contends that since the weekly guaranty was paid in workweeks in which less than 84 hours were worked that "the guaranty actually controlled the compensation paid" and that the guaranty "must be considered . . . as determinative of the regular rate" (p. 14). It is true that the guaranty was paid in such

workweeks but the conclusion drawn by the petitioner is unsound as is established by the decision of this Court in the *Belo* case. As this Court said in that case:

> "... although it is perfectly true that when the employee works less than 54½ hours during the week his pay is determined by the $40 guaranty, it does not dispose of the problem simply to say this. The question remains whether the $40 contemplates compensation for overtime as well as basic pay. The contract says that the employee is to receive 67 cents an hour for the first 44 hours and *'not less than* one and one-half time such basic rate' for each hour over 44. Consequently, if an employee works 50 hours in a given week, it might reasonably be said that his $40 wage consists of $29.48 for the first 44 hours (44 x $.67) plus $10.52 for the remaining six hours (6 x $1.753). To be sure, $1.753 is more than 150% of $.67. But the Act does not prohibit paying more; it requires only that the overtime rate be 'not less than' 150% of the basic rate. It is also true that under this formula the overtime rate per hour may vary from week to week. But nothing in the Act forbids such fluctuation." (316 U. S. 632.)

In the instant case there is a substantially smaller percentage of workweeks in which the employees worked less than 84 hours than the percentage of workweeks in the *Belo* case where the employees worked less than 54½ hours. Conversely, here there is a substantially greater percentage of workweeks in which compensation was paid in addition to the weekly guaranty than existed in the *Belo* case. As stated by the Administrator in his briefs in the *Belo* case, out of approximately 1100 man workweeks in only 71 were hours worked in excess of

those paid for by the weekly guaranty [Exhibit "E," p. 2 and n. 2, p. 4]. Thus in the *Belo* case in only 6.4% of the total workweeks were the number of hours worked sufficient to earn additional compensation above the weekly guaranty, leaving 93.6% of the workweeks in which the employee worked 54½ hours or less. In the case at bar, during the period involved, there was a total of 4,284 man workweeks and in 20% of the total workweeks the hours worked exceeded 84 [R. 384] and for such excess hours the employee received compensation in addition to the weekly guaranty at a rate not less than one and one-half times the hourly rate specified in the employment contract [R. 333]. In over 87% of the total workweeks during the period the number of hours worked exceeded 40 [R. 384, 226].

Petitioner claims that respondent had a specific overtime rate but we have shown above that this contention has no basis in fact.

Petitioner refers to the fact that where only one or two overtime hours are worked the overtime rate bears a high ratio to the regular rate and that the overtime rate decreases as the number of hours worked increases. This fact proves nothing. The same situation existed in the *Belo* case. Using the typical contract in the *Belo* case, the overtime rate for the first hours worked after the statutory maximum is approximately 2,000% of the regular rate and where two overtime hours are worked the overtime rate is approximately 1,000% of the regular rate and where three overtime hours are worked the overtime rate is approximately 666⅔% of the regular rate. Petitioner refers to the decreasing ratio between the regular rate and the overtime rate as an anomaly and claims it disregards the historical function which an

overtime rate is intended to fulfill, and also the general practice in American industry (p. 18). The same situation, however, exists in the Irregular Workweek Plan which the Administrator advocates and which he contends should apply in this case. Under the Irregular Workweek Plan not only does the overtime rate decrease as the number of hours worked increases but even the regular rate decreases as the hours worked increase. "It is true that the longer the hours the less the rate and the pay per hour" (*Missel* case, 316 U. S. at 580). Assume a weekly wage of $40 under the Irregular Workweek Plan. If no overtime is worked the regular rate is $1.00 per hour. If 20 hours of overtime are worked the regular rate drops to 66⅔¢ per hour and the additional overtime pay is 33⅓ cents per hour. If, however, 40 overtime hours are worked the regular rate drops to 50 cents and the additional overtime pay drops to 25 cents per hour. A decrease in both the overtime rate and the regular rate as longer hours are worked is more of an anomaly than if only the overtime rate decreases. In any event, petitioner's argument heretofore has been answered by this Court in its decision in the *Belo* case. This Court there said:

> "It cannot be denied that the flexibility of the overtime rate is considerable, but this flexibility may well have been intended if it was the only means of securing uniformity in weekly income. Moreover, under the Administrator's interpretation, the regular rate in the example given is $40 divided by the number of hours worked each week. Since the number of hours worked fluctuates so drastically from week to week, this 'regular' rate is certainly 'irregular' in a mathematical sense. And inasmuch as it cannot be calculated until after the workweek has been com-

pleted, it is difficult to say that it is 'regular' in the sense that either employer or employee knows what it is or can plan on the basis of it." (316 U. S. at 632-633.)

Petitioner refers to the fact that the original sample payroll sheet listed the monthly equivalent of the weekly guaranty (which petitioner inaccurately refers to as monthly salary) and did not list the hourly rate. Respondent was endeavoring to eliminate as much clerical work in the field offices as possible, particularly due to the scarcity of such help in wartime. Since the hourly rate was carried on other records there was no occasion to list such rates on the payroll sheets made out in the field offices. This was particularly true since originally the computation of overtime hours worked in excess of 84 was made at the home office in Oklahoma [R. 82].

In his brief at page 15, petitioner quotes a detached excerpt from an instruction to the field offices that "'overtime rate . . . has no practical use unless the employee works in excess of 84 hours in a single workweek' [R. 316]" and infers that such statement referred to the "effect of the employment contract." This is misleading. The quoted excerpt referred to the use of the column of overtime rates on the chart [R. 73] as the record herein clearly shows [R. 316]. This was merely the communication to the clerical help in the field offices that computation of overtime rate from the chart was unnecessary unless the number of hours worked exceeded 84. This was true since the guaranty paid for 40 hours at the regular rate and an additional 44 hours at not less than one and one-half times the regular rate.

Petitioner refers to the fact that the amount of the weekly guaranty was reduced where the employee failed to work a full workweek (p. 15). During the period involved, out of a total of 4,458 workweeks, there were only 174 instances where an employee worked less than a full workweek [R. 335]. 92% of such partial workweeks were due to an employee commencing or terminating his employment during the pay period [R. 336]. In only 4 instances was any deduction made for voluntary layoff [R. 336]. It was necessary and only justice to reduce the amount of the weekly guaranty where the employee failed to work a full workweek. The employee was paid at the hourly rate specified in the contract for the first 40 hours and at least one and one-half times such specified hourly rate for all overtime hours, or the prorata amount of his weekly guaranty, whichever was the greater [R. 380]. Respondent believed that it was obligated so to do [R. 334].

Petitioner states that "a plan which depends upon a fluctuating overtime rate for its validity is no less artificial than the so-called 'x-plan' . . ." (p. 18) and then devotes two pages of his brief in attacking the so-called "x-plan." Respondent is not here to advocate or to defend the so-called "x-plan" but confines itself to upholding the type of employment contract which this Court in the *Belo* case held valid and not violative of the Fair Labor Standards Act. It may not be amiss to point out that the type of employment contract involved in the *Belo* case and here involved bears no resemblance to the so-called "x-plan." Under the "x-plan" the regular rate not only is not agreed upon but is unknown until after the workweek is completed and it is upon this later determined amount that the overtime rate is based. In the

Belo type employment contract the regular rate is agreed upon and fixed in advance and the overtime rate is not less than one and one-half times the regular rate so fixed and agreed upon. The so-called "x-plan" bears more similarity to the Irregular Workweek Plan than to the type of employment contract here involved. In both the "x-plan" and the Irregular Workweek Plan the amount of the regular rate is unknown and cannot be determined in advance but is arrived at by computation after the completion of the workweek.

That the agreed basic hourly rate specified in the employment contract is the regular rate at which the employee was employed is clearly established by the record. Respondent and each employee negotiated and executed a written contract wherein it was agreed between them "Employee agrees to employ Employee as a cementer and to pay Employee for his services a regular basic rate of 59 cents per hour for the first (40) hours of any workweek . . . ." Nothing could be clearer than that this was the regular rate at which the employee was employed for the first 40 hours of any workweek. The regular employment agreement further provided that for all time over 40 hours in any workweek employee should be paid not less than one and one-half times such basic hourly rate of pay and that the employee should "receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $63.46 for each workweek." It is indubitably clear that where overtime hours were worked that the weekly guaranty paid for the first 40 hours at straight time and for all overtime hours (not exceeding 44) at not less than one and one-half times the straight time rate. In other words, the weekly guaranty included pay for overtime hours

at not less than the minimum overtime rate. Petitioner here, however, contends that the guaranty paid for all hours worked only at the straight time rate. This contention is entirely at variance with the intent of the parties. That petitioner's contention violates the intent of the parties is demonstrated in this case by the fact that the employees received compensation in addition to the weekly guaranty and such additional compensation was computed at a rate of one and one-half times the basic hourly rate specified in the contract. If, as petitioner contends, the weekly guaranty was merely a weekly wage paying for all hours worked at straight time, the additional compensation for such hours would be on a basis of only one-half times the straight time rate. In some instances the straight time rate calculated under the Irregular Workweek Plan would be substantially less and the basic hourly rate specified in the employment contract. This is demonstrated by Exhibit "J" [R. 366-367]. For the week ending January 16, 1943, H. L. Alexander's contract straight time rate was 48¢, but computed on the Irregular Workweek Plan would be only 42¢. The additional compensation for overtime hours would be at the rate of 21¢ per hour under the Irregular Workweek Plan, while under the contract it would be not less than 72¢. The total compensation received for the week, computed under the Irregular Workweek Plan, would be $77.96, while the total compensation under the contract would be not less than $80.72. For the week ending July 17, 1943, the basic hourly rate under the contract was 55¢, while computed under the Irregular Workweek Plan it would

be only 50¢ and the total compensation received under the Irregular Workweek Plan would be substantially less than the amount actually paid Mr. Alexander for that week under the employment contract. During the period involved there is a total of 4,284 full workweeks. In 20% of the total workweeks—one out of every five—[R. 384] compensation was paid the employees in addition to the weekly guaranty. Such additional compensation was at a rate of not less than one and one-half times the hourly rate specified in the employment contract [R. 333]. "In this situation, then, it is clearly the guaranty that becomes inoperative and the 67-cent hourly rate fixed by the contract that is controlling." (*Belo* case, 316 U. S. at 632.) The payment of compensation in addition to the weekly guaranty at the rate of not less than one and one-half times the basic hourly rate specified in the contract is consistent only with the premise that the agreed hourly rate was the regular rate at which the employee was employed. It would be wholly inconsistent with petitioner's contention that the guaranty was a weekly salary which paid for all hours worked at straight time. The foregoing, we submit, establishes that the basic hourly rate specified in the employment contract was the regular rate at which the employee was employed. The District Court expressly found that the employment contract "was intended to and did really fix the regular rate at which each of the respective field employees was employed" and "each field employee agreed to be employed and was employed at the hourly rate specified as the basic regular hourly

rate in the written contract" [R. 34]. The Circuit Court of Appeals concurred in this finding [R. 48].

In so far as petitioner's contentions are based solely upon the contract, the present a question of law which we submit has been determined by this Court in the *Belo* case. In so far as such contentions are based upon the contract and evidence extrinsic to the writing, they present a question of fact which has been determined by both lower courts. We submit that the foregoing findings, being concurrent findings of the two lower courts, should be accepted by this Court without reexamination of the evidence.

General Talking Picture Corp. v. Western Electric Co.; 304 U. S. 175, 178;

United States v. McGowan, 290 U. S. 592;

United States v. Commercial Credit Company, 286 U. S. 63, 67;

Page v. Arkansas Nat. Gas Corp., 286 U. S. 269, 271;

Allen v. Trust Company of Georgia (U. S.), 90 L. Ed. Adv. Ops. 305 at 308, decided January 28, 1946.

In the case last cited the Court said:

"Here two courts have resolved that question of fact in favor of respondents . . . Those findings, being concurrent findings of the two lower courts, will be accepted here without reexamination of the evidence. See United States v. O'Donnell, 303 U. S. 501, 508, 82 L. Ed. 980, 984, 58 S. Ct. 708, and cases cited."

D. Payment of Compensation in Accordance With the Employment Contracts Does Not Violate the Statutory Purposes.

Petitioner argues the converse of this proposition beginning at page 20 of his brief. Petitioner's argument is founded on the assumed erroneous premise that respondent's field employees are not compensated for overtime hours worked at a rate of at least 150% of the rate of compensation for the first 40 hours worked. This false premise permeates all of petitioner's discussion under this point. The conclusions drawn by petitioner fall with the false premise.

The fact is that for each hour worked in excess of 40 hours in a workweek each of respondent's employees is compensated at a rate at least 50% more than the rate of compensation for each of the first 40 hours. This is true whether such overtime hours are within the number paid for by the weekly guaranty or are hours in excess of such number. Under the employment contracts here involved the regular rate remains constant and the employee receives at least one and one-half times such rate for every overtime hour worked. He never receives less, though sometimes he may receive more, and as said by this Court, "But the Act does not prohibit paying more; it requires only that the overtime rate 'be not less than' 150% of the basic rate" (316 U. S. at 632). If the employee works more hours in a workweek than are paid for by the weekly guaranty (as was often done here), the overtime rate is constant, being always equal to or slightly in excess of 150% of the agreed basic hourly rate.

The Act here involved does not limit the number of hours that an employee may work, provided the employee

is compensated for hours in a workweek in excess of 40 at a rate not less than 50% higher than the rate paid for the first 40 hours of work. "If he is paid time and one-half for overtime, he may work as many hours in a week as he and his employer see fit" (Interpretative Bulletin No. 4, Par. 1, R. 233]. That was done here. Petitioner's extended discussion of the establishment in certain industries of limited workweeks without payment of overtime appears irrelevant and superfluous. This matter now expressly has been covered by the Fair Labor Standards Act in providing that time and one-half must be paid for all hours over 40.

Petitioner argues under this point that this type of contract encourages employers to work the employee more than 40 hours in a workweek since it is to his financial advantage so to do. But the same financial incentive to work employees longer hours exists under the Irregular Workweek Plan which the Administrator has officially approved and which he urges should be applied here. Under that plan the longer the hours worked the lower is both the regular rate and the overtime rate. Assume an employer has 600 hours of work each week and he pays his employees $60 per week. If he employs 12 men to do the work they will each work 50 hours and the regular rate will be $1.20 per hour and for the 10 overtime hours they will receive additional compensation of 60¢ per hour. The total cost for the 12 employees will be $792. If he has only 10 employees to do the work each of such employees will be required to work 60 hours. Their hourly rate will be $1.00 with additional compensation for the 20 hours of 50¢ per hour. The total cost for the 10 men will be only $700. Therefore, under the Irregular Workweek Plan the employer would save $92 each

week by employing only 10 men and working them 60 hours per week, as compared to employing 12 men and employing them only 50 hours per week.

If one is "realistic" it must be clear that there is a limit to the amount that an employer economically can pay for a particular type of work. It also must be clear that if the contracts here involved were held invalid respondent would be compelled to adopt some other plan of compensation whereby the same work done would cost him approximately the same amount. If respondent adopted the Irregular Workweek Plan the amount of the weekly wage would be fixed at an amount substantially less than the amount of the weekly guaranty specified in the contracts now in effect, so that the cost to the employer and the amount received by the employee would not substantially increase the labor cost. In view of the wide fluctuation in the volume of work in this industry and the absence of respondent's control over the volume or the time when it must be done, it is most improbable that the change in plan would spread employment. In slack periods respondent could not afford to carry additional men on its payroll and in busy periods additional trained men are not obtainable. Furthermore, the Irregular Workweek Plan would be less satisfactory to the employees. Since the weekly wage would pay for straight time only, it necessarily would be substantially less than the amount of the weekly guaranty provided in the present contract. In busy periods the employee's income may be somewhat higher than it now is but in slack periods his income would be substantially less. The employee would lose "the security of a regular weekly income" which many employees value and which this Court has considered a "desirable objective" (316 U. S. at 635). The District Court in

this case found that the existing plan was more satisfactory than the irregular workweek plan [R. 40-41].

The same arguments made here by petitioner under this point were likewise urged before this Court in the petitioner's brief in the *Belo* case, and likewise in his petition for a rehearing by this Court in that case. Petitioner's argument on this point has been answered and the question definitely settled by the decision of this Court in the *Belo* case and in the numerous subsequent decisions of this Court recognizing its continued authority.

E. The Cases Relied On By Petitioner Are Clearly Distinguishable.

In his brief in this Court petitioner relies almost entirely upon general language in the opinion of this Court in the cases of *Walling v. Helmerich & Payne, Inc.*, 323 U. S. 37; *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U. S. 410, and *Walling v. Harnischfeger Corp.*, 325 U. S. 427. Each of these three cases involved types of employment contracts entirely different than the one here under consideration and under consideration in the *Belo* case. In each of the cases relied upon by petitioner the employment agreement provided that the overtime rate should be computed by use of a designated regular rate which was less than the amount actually received by the employee for the first 40 hours worked in a workweek where overtime hours were worked.

In the *Helmerich & Payne* case the employees worked shifts or tours of 8, 10 or 12 hours each. In each shift

or tour one-half of the hours worked were paid for at a specified rate and the other half of the hours worked in the shift or tour were compensated at one and one-half times such specified rate. For example, in an 8-hour tour the employee received a "regular rate" of 70 cents an hour for the first 4 hours and an "overtime" rate of $1.05 for each of the remaining 4 hours of each tour (323 U. S. at 38, n. 1). It is apparent that the employee's compensation for the first 40 hours worked was not the product of 40 and the "regular rate" of 70 cents, or $28.00, but was $35.00. The actual average hourly rate for the first 40 hours worked in a workweek therefore was not 70 cents but 87½ cents. Hours worked in excess of 40 in a workweek were not compensated at a rate of one and one-half times 87½ cents. All hours worked in the sixth tour were overtime hours, for the first 4 of which he was compensated at the rate of 70 cents an hour and for the remaining 4 at the rate of $1.05 per hour. Thus, for the first 4 overtime hours the employee was not even compensated at one and one-half times the designated "regular rate" of 70 cents but only at the designated straight time rate. By reason of these facts this Court held the employment contract invalid. In that case the Court said,

> "The vice of respondent's plan lay in the fact that the contract regular rate did not represent the rate which was actually paid for ordinary, non-overtime hours, nor did it allow extra compensation to be paid for true overtime hours". (323 U. S. at 41).

The so-called "split-day plan" involved in the *Helmerich & Payne* case bears no resemblance to the type of employment contract involved in the *Belo* case or here involved. This Court expressly recognized the distinction and there said:

> "Nothing in this Court's decision in Walling v. A. H. Belo Corp., 316 U. S. 624, 86 L. Ed. 1716, 62 S. Ct. 1223, *supra*, sanctions the use of the split-day plan. The controversy there centered about the question whether the regular rate should be computed from the guaranteed weekly wage or whether it should be identical with the hourly rate set forth in the employment contract. There was no question, as here, pertaining to the applicability of the regular rate to the first 40 hours actually and regularly worked, with the overtime rate applying to all hours worked in excess thereof." (323 U. S. at 42.)

In the *Youngerman-Reynolds* case, by the terms of the contract the overtime pay was computed upon a specified amount which was not the rate at which the employee was paid for the first 40 hours in a workweek where overtime hours were worked. The contract also provided for compensation upon a piecework basis and this basis of compensation applied to the work done during the first 40 hours of the workweek as well as work done during the hours in excess of the first 40. For each of the first 40 hours of work the employee actually received 59¢ per hour on the peacework basis instead of the specified regular rate of 35¢ per hour, but his overtime rate was computed solely on the specified rate of 35¢. This was held

to be a violation of the Act. The employment contract involved in the *Youngerman-Reynolds* case clearly is different from the one here involved and involved in the *Belo* case. This Court clearly recognized the distinction and said:

> "This Court's decision in Walling v. A. H. Belo Corp., 316 U. S. 624, 86 L. ed. 1716, 62 S. Ct. 1223, lends no support to respondent's position. The particular wage agreements there involved were upheld because it was felt that in fixing a rate of 67 cents an hour the contracts did in fact set the actual regular rate at which the workers were employed." (325 U. S. at 426.)

The *Harnischfeger* case involved an employment contract which provided for a basic hourly rate, plus an incentive bonus or piecework earnings. The incentive bonus was paid for work during the first 40 hours of the workweek as well as for overtime hours. The employee actually received during the first 40 hours worked in a workweek compensation at a rate higher than the specified hourly rate but overtime compensation was computed on the lower rate. This Court held that the incentive bonus was part of the regular rate of pay. Both the *Harnischfeger* and *Youngerman-Reynolds* cases involved piecework earnings. They were considered together by this Court and decided on the same day. The distinction between such contracts and the *Belo* type contract was expressly recognized by this Court in the *Youngerman-Reynolds* case as above noted. The distinction between

the two types of employment contracts was recognized in the concurring opinion of Mr. Justice Frankfurter in the two cases where it is said:

> "Nor does the Act bar an agreement establishing an hourly 'regular rate' that does not fall short of the statutory minimum even though it be complicated by a guaranteed weekly lump sum wage adapted to the circumstances of a particular employment, provided it is not a mere artifice unrelated to wage-earning actualities. Walling v. A. H. Belo Corp., 316 U. S. 624, 86 L. ed. 1716, 62 S. Ct. 1223;" (325 U S. at 433).

Petitioner makes no contention that this case falls within the decision of this Court in any of the three cited cases. Petitioner relies upon general language contained in the opinions. Such language was used by this Court in discussing an entirely different type of employment contract which this Court expressly recognized as being different. Petitioner has failed to heed the admonition of this Court

> "that words of our opinions are to be read in the light of the facts of the case under discussion . . . General expressions transposed to other facts are often misleading." (*Armour & Co. v. Wantock*, 323 U.S. 132-133.)

Thus, it clearly appears that each of the three cases relied upon by petitioner are actually clearly distinguishable from the type of contract here under consideration and this Court expressly recognized the distinction.

II.

The Decision of This Court in the Belo Case Should Not Be Overruled.

Petitioner's brief in the main is an attack upon the decision of this Court in the *Belo* case. Petitioner urges that if this case and the *Belo* case are not distinguishable "that the Belo decision should not be followed" (p. 32). We submit that the decision of this Court in the *Belo* case should not be overruled but should be adhered to for several independent reasons.

The type of contracts involved in the *Belo* case and here involved, we believe, complies with the provisions of Section 7 of the Fair Labor Standards Act of 1938. It provides for a regular hourly rate of pay for the first 40 hours worked in a workweek and for all hours in excess of 40 "at a rate not less than one and one-half times the regular rate at which he is employed." In some workweeks the overtime rate is greater than 150% of the regular rate "But the Act does not prohibit paying more; it requires only that the overtime rate be 'not less than' 150% of the basic rate" (316 U. S. 632). As stated by this Court in the *Belo* case, "the guaranty contract in this case carries out the intention of the Congress. It specifies a basic hourly rate of pay, and not less than time and a half that rate for every hour of overtime work beyond the maximum hours fixed by the Act," and that "Congress has said nothing to prevent this desirable objective" of "the security of a regular weekly in-

come." These statements are as true today as on the date of their pronouncement.

During the period of more than four years since the decision of this Court in the *Belo* case, the Congress has acquiesced in such construction of the statute and has refrained from amending the Act so as to require a different result. If the Congress deemed this Court's decision in the *Belo* case to be contrary to its intent, the matter could readily have been corrected by an amendment to the Act. There has been abundant opportunity for the Congress to give further expression to its will and it is well known that many bills have been introduced in the Congress to amend the Fair Labor Standards Act. No amendment has been adopted which would require a different result than expressed by this Court in its decision in the *Belo* case. This Court's construction of the Act in its decision in the *Belo* case should be adhered to, leaving it to Congress to amend the law should it deem a change necessary or desirable. Until such amendment is enacted this Court should "conclude that the interpretation of the Act then accepted has legislative approval."

United States v. Elgin J. & E. R. Co., 298 U. S. 492, 500.

See, also:

Apex Hosiery Co. v. William Leader, 310 U. S. 469, 487;

Missouri v. Ross, 299 U. S. 72.

Even if there were some doubt as to the soundness of this Court's decision in the *Belo* case, it should be adhered to in order to avoid confusion and unfortunate practical results from a change. The employment con-

tracts here involved were negotiated upon the faith of and in reliance upon the decision of this Court in the *Belo* case [R. 401] and undoubtedly other like contracts were executed in reliance upon that decision. Now to overrule the decision would result in extensive litigation and most substantial liability. The demarcation between valid and invalid wage plans under the Fair Labor Standards Act is now fairly well settled by the decision of this Court in the *Belo* case and in the later decisions in the *Helmerich & Payne*, *Harnischfeger* and *Youngerman-Reynolds* cases. Lower courts have relied upon and followed the decision of this Court in the *Belo* case and a change of decision would result in uncertainty. This Court has said with respect to a questioned decision.

> "a long period of accommodations to an older decision sometimes requires us to adhere to an unsatisfactory rule to avoid unfortunate practical results from a change."
>
> *Helvering v. Griffiths*, 318 U. S. 371, 403;
> *Davis v. Department of Labor of Washington*, 317 U. S. 249, 255.

If the decision of this Court in the *Belo* case were overruled and the decision made retroactive, the rights of respondent and its numerous employees who entered into the employment contracts, and the rights of numerous employers and employees who have executed a similar type of employment contract, would be impaired and such employers subject to potential liability of many hundreds of thousands of dollars. Where, as here, *bona fide* employment contracts have been entered into on the faith of and in reliance upon a decision of the highest Federal Court of the land construing a federal statute, such contracts and the rights thereunder acquired should not

be impaired by a change of construction made by a subsequent decision.

Moore-Mansfield Co. v. Electrical I. Co., 234 U. S. 619, 623;

Douglass v. County of Pike, 101 U. S. 677, 687;

Green County v. Conness, 109 U. S. 104;

Jackson v. Harris (C. C. A. 10), 43 F. (2d) 513, 516.

The decision of this Court in the *Belo* case has been recognized as established law since its pronouncement in June 1942. Concurrent and subsequent decisions in this Court have expressly referred to it as having continued authority, including the *Missel* case, the *Bradshaw Drilling Company* case, the *Helmerich & Payne* case, the *Harnischfeger Corporation* case and the *Youngerman-Reynolds* case. As stated by the Circuit Court of Appeals for the Ninth Circuit in this case, this Court "has carefully and consistently refrained from overruling the earlier decision or denying its continued authority." Such express recognition has tended to fortify the decision in the *Belo* case as established law. A substantial proportion of the citizens of this nation are affected by the Fair Labor Standards Act and it is important to them that there be stability in the interpretation of the Act. If the decision in the *Belo* case readily may be overruled then other decisions of this Court interpreting the Fair Labor Standards Act may be expected to be changed. Counsel and parties will bring and prosecute actions in the teeth of the decisions in the belief that the asserted rule will be changed or modified. While the doctrine of *stare decisis* is not rigid, it is an important principle of our jurisprudence and social policy. Our system of law is based upon the formulation

of and adherence to principles that will impart stability to and predictability of judicial discretion. As was said by the late Mr. Justice Cardoza in his work "The Nature of the Judicial Process" (p. 149), "adherence to precedent should be the rule and not the exception."

Conclusion.

The employment contract here under consideration is practically identical with the employment contract considered and held valid by this Court in the *Belo* case. No substantial differences in practice in the two cases exist. Practically all of the matters upon which petitioner relies in an attempt to distinguish this case from the *Belo* case were also present in the *Belo* case. The findings concurred in by both lower courts should not here be disturbed. The cases relied upon by petitioner involved employment contracts entirely different than the one here involved. Such cases are clearly distinguishable from the *Belo* case and the distinction was expressly recognized by this Court. The decision of this Court in the *Belo* case should not be overruled.

For the reasons herein set forth, we respectfully submit that the judgment should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 74.—October Term, 1946.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Petitioner, v. Halliburton Oil Well Cementing Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[April 14, 1947.]

Mr. Chief Justice Vinson delivered the opinion of the Court.

This case brings here a question as to the application of the overtime provisions of the Fair Labor Standards Act[1] to the payment of compensation pursuant to employment contracts similar to those in *Walling* v. *Belo Corp.*, 316 U. S. 624.

Respondent is engaged in the business of cementing, testing and otherwise servicing oil wells, for which it uses its own peculiar equipment. To operate this equipment respondent retains a highly stabilized group of skilled and specially trained "field employees." The volume of respondent's business, however, is highly inconstant.

[1] 52 Stat. 1060, 29 U. S. C. § 201 *et seq.* The relevant overtime provisions, contained in § 7 (a), 29 U. S. C. § 207 (a), are as follows:

"No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

. . . . .

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

Consequently, these employees are required to work a variable number of hours from day to day and from week to week.

Prior to passage of the Act in 1938, these employees were paid fixed monthly salaries. Thereafter, they were put on a "weekly-guarantee" plan similar to that which was to be involved in the *Belo* case. This plan was abandoned March 1, 1942, under pressure from the Administrator of the Act, and reinstated July 1, 1942, after the *Belo* decision had seemed to end all questions as to its legality.[2] Since its reinstatement the plan has been continuously in effect, and embodied in formal written contracts between respondent and the employees to whom it has applied.

The part of these contracts now in issue is respondent's agreement to pay these employees "a regular basic rate of [a specified number of] cents per hour for the first 40 hours of any workweek, and not less than one and one-half times such basic hourly rate of pay for all time over 40 hours in any workweek, with a guarantee that Employee shall receive for regular time and for such overtime as the necessities of the business may demand a sum not less than $ [a specified number] for each workweek."[3]

The regular basic rate so specified was in each case at or above the minimum prescribed by the Act or by the Administrator's order, but that rate was always so related to the guaranteed flat sum that the employee became entitled to more than the guarantee only in weeks in which he worked more than 84 hours.[4] The compensation

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[2] This Court decided the *Belo* case June 8, 1942.

[3] Compare the almost identical wording of the *Belo* contract, 316 U. S. at 628.

[4] For instance, the lowest specified basic rate in May, 1944, when this case was tried, was 40 cents an hour. Compensation at this rate for 40 hours and at one and one-half this rate for 44 additional hours equals $42.40. Actually, the correlative weekly guarantee was the slightly greater sum of $42.69.

actually paid was regularly consistent with the contractual obligation as stated.

Petitioner sued respondent under § 17 of the Act to enjoin against future adherence to this plan, on the ground that it failed to include overtime compensation as required by § 7 (a). He contended that the actual "regular rate" of compensation payable under these contracts was not the specified basic rate, but rather the quotient of the amount of the correlative guarantee divided by the number of hours worked in that week. This was said to follow from the fact that the employees usually worked less than 84 hours a week and nevertheless received the full guaranteed sum.

The District Court found, however, that the contracts were "bona fide," and that "they were intended to and did really fix the regular rate" at which the men were employed. It denied relief [5] and the Circuit Court of Appeals affirmed,[6] both Courts relying on our decision in the *Belo* case.

Petitioner admits a close similarity of facts and of his basic contentions in this and the *Belo* case. He argues, however, that the *Belo* decision should not be followed: (a) because there are factual differences between the two cases adequate to distinguish them, (b) because *Belo* has been implicitly overruled by later decisions of this Court, and (c) because the *Belo* decision is erroneous.

As to the first of these arguments, we note that the contracts in *Belo* and in this case are substantially identical, except for the amount of the hourly rate and of the fixed guarantee. Under the *Belo* contract, however, overtime would be paid in addition to the guaranteed wage after 54½ hours had been worked in any given week; [7] under

[5] 57 F. Supp. 408.

[6] 152 F. 2d 622.

[7] See the statement and explanation of the *Belo* contract, 316 U. S. at 627–629.

this contract, only after 84 hours. It is said that this 84 hours bears no relation to the usual workweek.

Actually, the employees in this case have no usual workweek. In many weeks they work more than 100 hours; in others less than 30. In about 20 per cent of the workweeks, they work in excess of 84 hours.[8] Whenever they do, they are paid in accordance with the contract on the basis of the specified hourly rate with appropriate overtime.

No more can be said as to the relation between 54½ hours and the usual workweek in *Belo*. It appears from the record in that case that the employees there involved also worked fluctuating workweeks, and that the average workweek was substantially less than 54½ hours. Indeed, it appears that the *Belo* employees exceeded 54½ hours in considerably less than 20 per cent of the weeks worked.[9] When they did so, they too were paid at the contractual rate with appropriate overtime.[10] There is nothing here to suggest different treatment of the two cases.

Petitioner also points to alleged differences in the fact that respondent in this case paid the full weekly guarantee even when its employees worked less than 40 hours in

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[8] The record shows that of 4,284 man-weeks worked by respondent's California field employees between July 5, 1942, and March 11, 1944, about 3% were less than 20 hours in length, about 13% were less than 40 hours, about 67% were from 40 to 84 hours, about 20% were over 84 hours, and about 7% over 104 hours, some running as high as 140 and 150 hours. This "work-week" was the basis for determining compensation, but it did not represent the number of hours actually worked by the employee. In the course of typical cementing and testing operations, many hours counted as working time were spent waiting while the drilling crew was running the casing, the cement was setting, the perforation work was being done by another company, or the testing tool was standing in the well hole.

[9] See Transcript of Record, Supreme Court of the United States, *Walling* v. *A. H. Belo Corp.*, No. 622, O. T. 1941, pp. 194–337.

[10] 316 U. S. at 631–632.

the week, and the fact that respondent carried fixed rather than fluctuating overtime rates on its payroll records.

As to the first of these points, there is actually no difference between this case and *Belo*. The employees in both cases had a contractual right to the full guarantee however short their workweek, and those in *Belo* were paid it as well as those here.[11] The second fact we think without significance. The function of the payroll records was merely to show the amounts of compensation payable. These records did not affect respondent's contract obligations, nor suggest a practice at variance with the contract.

We think that whatever differences exist between this case and *Belo* are without substance, and that it must either be followed or overruled.

This brings us to petitioner's second argument, in which our attention is directed to three cases decided since *Belo*, wherein we held that certain plans of overtime compensation failed to meet the § 7 (a) requirement. It is urged that the provisions for overtime compensation in these cases were legally no less adequate than, and that the principles on which they were decided are necessarily inconsistent with, the overtime provision and the principles of the *Belo* case.

In *Belo* itself, the specified basic hourly rate was held to be the actual regular rate because, as to weeks in which employees worked more than 54½ hours, the specified rate determined the amount of compensation actually payable; as to weeks in which they worked less, the Court inferred from the collateral specification of a basic rate and provision for a legal but variable rate of overtime pay that the guaranteed flat sum then due also contemplated both basic pay and overtime.[12] On the other hand, we

[11] *Fleming* v. *A. H. Belo Corp.*, 121 F. 2d 207, at 210, note 6.

[12] 316 U. S. at 631–632. In *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, decided the same day as *Belo*, the employees also worked

find that in the three later cases relied on by petitioner, the agreed method by which wages were computed made a like inference impossible.

In *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, we considered a "split-day plan," under which a prescribed "regular" hourly rate was payable for the first four hours of each eight-hour shift, and a prescribed "overtime" rate, of one and one-half the "regular" rate, was payable for the other four hours.[13] In those weeks in which an employee worked statutory overtime, he was paid at the contract "overtime" rate for many straight-time hours and at the contract "regular" rate for many overtime hours. Obviously, these prescribed rates were not actual regular and overtime rates, although so named in the plan. Consequently, as in *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, we held that the regular rate was to be determined by dividing the wages actually paid by the hours actually worked. In so deciding, we expressly noted that *Belo* was not controlling because the wage plans involved in the two cases posed entirely different questions as to the application of § 7 (a).[14]

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an irregular number of hours each week, but were simply paid a fixed weekly wage. The Court noted the absence of any agreement between the contracting parties for the payment of a specified rate and overtime, and of any contractual limitation on the number of hours the employee could be required to work for the fixed wage. It also noted that these factors were not absent from the *Belo* plan. See 316 U. S. at 581.

[13] Theoretically, when an employee had so accumulated 40 "regular" hours in one week, all subsequent hours were compensable as "overtime." Actually, no employee ever did so. See 323 U. S. at 41.

[14] "Nothing in this Court's decision in *Walling* v. *Belo Corp.*, *supra*, sanctions the use of the split-day plan. The controversy there centered about the question whether the regular rate should be computed from the guaranteed weekly wage or whether it should be identical with the hourly rate set forth in the employment contract. There was no question, as here, pertaining to the applicability of the regular

In *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419, and *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427, the contracts established two alternative methods for computing each employee's wages. One was to multiply his straight-time hours of work by a specified basic hourly rate, and his overtime hours by one and one-half that rate, and add the products. The other was to multiply the number of jobs done by a specified piecework rate. The employee was entitled to be paid the greater of these two sums.[15] The method of computing the amount due at piece-work rates, which were constant for work done on both straight-time and overtime hours, of course negated any possible inference that the payment of such amount contemplated legal overtime compensation. The specified hourly rates were so low, however, relative to piecework rates, that the latter were always, or almost always, determinative of the wage actually to be paid. These cases held merely that such specified hourly rates were not the "regular" rates of wage payments to which they were not related, and which were computed according to a necessarily inconsistent method. Again, *Belo* was expressly distinguished.[16]

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rate to the first 40 hours actually and regularly worked, with the overtime rate applying to all hours worked in excess thereof." *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, at 42.

[15] In the *Harnischfeger* case, the scheme was actually a little different from that in the *Youngerman-Reynolds* case, which is stated in the text. In *Harnischfeger*, the employee was credited with (a) the product of the total number of hours worked multiplied by the basic rate, plus (b) the amount by which piece-work earnings during all hours worked exceeded the product in (a), plus (c) the product of the number of overtime hours worked multiplied by one-half the basic hourly rate. The difference is that in *Harnischfeger* some provision was made for overtime; but in both cases the provision for overtime was inadequate, and for the same reason. See 325 U. S. at 431–432.

[16] "This Court's decision in *Walling* v. *Belo Corp.*, 316 U. S. 624, lends no support to respondent's position. The particular wage

Indeed, it would seem that the Court's opinions in these cases, far from undermining *Belo*, showed an affirmative concern that language appropriate to the situations then before us should not be extended to the different situation involved in this and the *Belo* case.

Finally, petitioner maintains that *Belo* was wrongly decided and that we should "define the area of [its] continued vitality, if any." His argument on this score is substantially the same as that advanced on behalf of the Administrator and considered by the Court in the *Belo* case itself.

The reasons stated in the *Belo* opinion for rejecting this argument are equally valid today, and need not be repeated. Moreover, our holding in *Belo* has been a rule of decision in this Court for five years, and recognized as such on each appropriate occasion. Knowing of the *Belo* decision, the Congress has permitted § 7 (a) to stand unmodified and the courts have applied it as so construed. Employers and employees (including those involved in this case) have regulated their affairs on the faith of it. Even if we doubted the wisdom of the *Belo* decision as an original proposition, we should not be inclined to depart from it at this time.

Affirmed.

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agreements there involved were upheld because it was felt that in fixing a rate of 67 cents an hour the contracts did in fact set the actual regular rate at which the workers were employed. The case is no authority, however, for the proposition that the regular rate may be fixed by contract at a point completely unrelated to the payments actually and normally received each week by the employees." *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419, at 426.

See also the concurring opinion of MR. JUSTICE FRANKFURTER in *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427, 433. The Court did not expressly refer to *Belo* in its opinion in the *Harnischfeger* case; but, as it did in *Youngerman-Reynolds*, which involves substantially the same question and was decided the same day, we consider that further reference to *Belo* would have been redundant.

SUPREME COURT OF THE UNITED STATES

No. 74.—October Term, 1946.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Petitioner, v. Halliburton Oil Well Cementing Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[April 14, 1947.]

Mr. Justice Rutledge.

I concur in the Court's judgment upon the authority of *Walling* v. *Belo Corp.*, 316 U. S. 624. I agree with Mr. Justice Murphy that the *Belo* decision is inconsistent with later decisions here, in the view it takes concerning the legal effects of the Fair Labor Standards Act. But those cases are distinguishable upon their facts; the *Belo* case has been relied upon by the parties to this cause and no doubt also by others, in making their arrangements; and the facts here seem to me indistinguishable from those covered by the *Belo* decision. Accordingly, although I would restrict the effects of that decision narrowly to the factual situation presented, I join in the judgment now rendered.

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Mr. Justice Murphy, with whom Mr. Justice Black concurs, dissenting.

It is conceded that the weekly guaranty was sufficient to pay for 40 hours at the so-called "regular basic rate" and for 44 additional hours at one and one-half times such "basic hourly rate." The contract overtime rate became effective only as to those hours of work in excess of 84. In other words, the "regular basic rate" referred to in the contracts had no meaning or effect whatsoever unless the employee worked more than 84 hours in a week. Whether he worked 20 hours, 40 hours or 60 hours in a week, he was paid the guaranteed amount.

To square such a wage scheme with the plain requirements of § 7 (a) of the Fair Labor Standards Act of 1938 is impossible. Time and again this Court has made it clear that the regular rate of compensation upon which overtime payments are to be based is the hourly rate actually paid to the employee for the normal, non-overtime workweek for which he is employed. *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 580; *Walling* v. *Helmerich & Payne*, 323 U. S. 37, 40; *United States* v. *Rosenwasser*, 323 U. S. 360, 363; *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419, 424; *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427, 430. "The regular

rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the wage contracts." *Walling* v. *Youngerman-Reynolds Hardwood Co., supra,* 424–425.

Our attention in this case must therefore be focused upon the actual payments, exclusive of those paid for overtime, which the parties have agreed shall be paid during each workweek. And when we do that, we discover that the parties have agreed that the employees shall receive the guaranteed amount, not the so-called "regular basic rate." That guaranteed amount is thus the regular rate for purposes of § 7 (a) of the Act, the so-called "regular basic rate" being an obviously artificial one.

It is said, however, that this scheme is sanctioned by *Walling* v. *Belo Corp.*, 316 U. S. 624. That is true, but it does not justify continuance of the erroneous *Belo* doctrine. The *Belo* case has been distinguished in subsequent opinions of this Court, but the distinctions were essentially ones of fact. On the basis of legal and statutory theory, the *Belo* case is irreconcilable with the later cases. The *Belo* case, which carries its own refutation in its dissenting opinion, should therefore be overruled. Otherwise we shall be perpetuating and augmenting the unrealities and confusion which have marked the application of the doctrine of that case. See Feldman, "Algebra and the Supreme Court," 40 Ill. L. Rev. 489; "Legality of Wage Readjustment Plans under the Overtime Provision of the Fair Labor Standards Act," 13 U. of Chi. L. Rev. 486; 44 Mich. L. Rev. 866.